

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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# **SPECIAL NOTICES**

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## **Health Health Care Financing, Coverage and Reimbursement Policy**

### **Notice for June 2015 Medicaid Rate Changes**

Effective June 1, 2015, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

**End of the Special Notices Section**



# EXECUTIVE DOCUMENTS

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Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution.

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## Governor's Executive Order 2015/002/EO: Wildland Fire Management

### EXECUTIVE ORDER

#### Wildland Fire Management

**WHEREAS**, the danger from wildland fires is extremely high in central and southern Utah;

**WHEREAS**, current below-normal precipitation in central and southern Utah contributed to the early drying of wildland vegetation; and

**WHEREAS**, many of the areas within these regions are remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

**WHEREAS**, immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment;

**WHEREAS**, immediate action is required to suppress the fire conditions and mitigate potential post-burn destruction. This destruction can lead to mudslides and flash floods causing dangerous conditions for life safety, property, natural resources and the environment;

**WHEREAS**, these conditions do create the potential for a disaster emergency within the scope of the Disaster Response and Recovery Act of 1981,

**NOW THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, critical infrastructure, natural resources and the environment for thirty days, effective as of April 27, 2015 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**IN TESTIMONY, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 27th day of April 2015

(State Seal)

**Gary R. Herbert**  
**Governor**

ATTEST:

**Lieutenant Governor**  
**Spencer J. Cox**

2015/002/EO

**End of the Executive Documents Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 16, 2015, 12:00 a.m., and May 01, 2015, 11:59 p.m. are included in this, the May 15, 2015, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least June 15, 2015. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 12, 2015, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

**PROPOSED RULES** are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page**

**Administrative Services, Finance**  
**R25-7**  
**Travel-Related Reimbursements for**  
**State Employees**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39301

FILED: 04/27/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule is changing for five different reasons. First, because of an increase in the lunch per diem for in-state travel. Second, because the "Premium Cities" section of the rule changed to "Premium Locations". Third, there were new cities added to the in-state lodging list that are allowed to exceed the \$70 per night statewide base lodging rate. Fourth, maid service and bellman tips are now allowed to be reimbursed. Fifth, documentation is now required before personal phone calls made while traveling on business may be reimbursed.

**SUMMARY OF THE RULE OR CHANGE:** The rule is changing for five different reasons. First, because of an increase in the lunch per diem for in-state travel. Second, because the "Premium Cities" section of the rule changed to "Premium Locations". Third, there were new cities added to the in-state lodging list that are allowed to exceed the \$70 per night statewide base lodging rate. Fourth, maid service and bellman tips are now allowed to be reimbursed. Fifth, documentation is now required before personal phone calls made while traveling on business may be reimbursed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63A-3-106 and Section 63A-3-107

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will potentially be an increased cost to the state as some reimbursements are increasing. However, the division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.

◆ **SMALL BUSINESSES:** Small businesses may see an increase in revenue. However, the division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursements.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals eligible for reimbursement will see an increase in their meal reimbursement amounts for in-state travel, or an

increase in meal reimbursement amounts to "Premium Locations" with receipts. However, the division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because the amendment only changes reimbursement rates and does not require any new action on the part of persons applying for reimbursement, there are not compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed these changes with the Division of Finance director and believe these changes are reasonable and warranted. Small business may see an increase in revenue. However we cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

ADMINISTRATIVE SERVICES  
 FINANCE  
 ROOM 2110 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015**

**AUTHORIZED BY: John Reidhead, Director**

**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Employees.**

**R25-7-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

**R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

**R25-7-3. Definitions.**

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

**R25-7-4. Eligible Expenses.**

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

**R25-7-5. Approvals.**

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is [~~\$39.00~~]\$40.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	<del>[\$13.00]</del> <u>\$14.00</u>
Dinner	\$16.00
Total	<del>[\$39.00]</del> <u>\$40.00</u>

(b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

.....

~~[(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$62 per day.]~~

[(4) When traveling to a Tier I premium location (Anchorage, Austin, Baltimore, Boston, Chicago, Dallas, Hawaii, Houston, Los Angeles, New York City, San Diego, San Francisco, Seattle, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$65 per day.]

When traveling to a Tier II premium location (Atlanta or Orlando), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$56 per day.]

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

~~[(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the \$62 premium allowance as follows:~~

~~(i) If breakfast is provided deduct \$14, leaving a premium allowance for lunch and dinner of actual up to \$48.~~

~~(ii) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$43.~~

~~(iii) If dinner is provided deduct \$29, leaving a premium allowance for breakfast and lunch of actual up to \$33.~~

[(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to \$50.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to \$45.

(iii) If dinner is provided deduct \$30, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to \$43.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$39.

(iii) If dinner is provided deduct \$26, leaving a premium allowance for breakfast and lunch of actual up to \$30.

(c) The traveler must use the same method of reimbursement for an entire day.

- (d) Actual meal cost includes tips.
- (e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

- (b) Actual meal cost includes tips.
- (c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In-State [ <del>\$39.00</del> ] <u>\$40.00</u>	[ <del>\$29.00</del> ] <u>\$30.00</u>	\$16.00	\$0
Out-of-State \$46.00	\$36.00	\$22.00	\$0

\*B = Breakfast, L = Lunch, D = Dinner

- (b) The days at the location.
  - (i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.
  - (ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-5:59 *no meals	2nd Quarter a.m. 6:00-11:59 *B	3rd Quarter p.m. 12:00-5:59 *B, L	4th Quarter p.m. 6:00-11:59 *B, L, D
In-State \$0	\$10.00	[ <del>\$22.00</del> ] <u>\$24.00</u>	\$[ <del>39.00</del> ] <u>40.00</u>
Out-of-State \$0	\$10.00	\$24.00	\$46.00

\*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the

employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

**R25-7-7. Meals for Statutory Non-Salaried State Boards.**

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

**R25-7-8. Reimbursement for Lodging.**

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax except as noted in the table below:

TABLE 5

Cities with Differing Rates

[Blanding]	\$75.00 plus tax
Bluff	\$80.00 plus tax
Brigham City	\$75.00 plus tax
Bryce Canyon City	\$75.00 plus tax
Cedar City	\$75.00 plus tax
Ephraim	\$75.00 plus tax
Fillmore	\$75.00 plus tax
Green River	\$80.00 plus tax
Kanab	\$80.00 plus tax
Layton	\$80.00 plus tax
Logan	\$80.00 plus tax
Moab	\$100.00 plus tax
Monticello	\$75.00 plus tax
Ogden	\$80.00 plus tax
Park City/Heber City/Midway	\$90.00 plus tax
Price	\$75.00 plus tax
Provo/Orem/Lehi/ American Fork/Springville	\$85.00 plus tax
Salt Lake City Metropolitan Area	

—(Draper to Centerville), Tooele	\$100.00 plus tax
St. George/Washington/Springdale	\$80.00 plus tax
Torrey	\$75.00 plus tax
Tremonton	\$90.00 plus tax
Vernal/Roosevelt/Ballard	\$95.00 plus tax
All Other Utah Cities	\$70.00 plus tax
J Blanding	\$75.00 plus tax
Bluff	\$80.00 plus tax
Brigham City	\$75.00 plus tax
Bryce Canyon City	\$75.00 plus tax
Cedar City	\$75.00 plus tax
Ephraim	\$75.00 plus tax
Farmington	\$85.00 plus tax
Fillmore	\$75.00 plus tax
Garden City	\$80.00 plus tax
Green River	\$85.00 plus tax
Kanab	\$80.00 plus tax
Layton	\$80.00 plus tax
Logan	\$80.00 plus tax
Moab	\$100.00 plus tax
Monticello	\$80.00 plus tax
Ogden	\$80.00 plus tax
Park City/Heber City/Midway	\$90.00 plus tax
Price	\$75.00 plus tax
Provo/Orem/Lehi/American Fork	
Springville	\$85.00 plus tax
Salt Lake City Metropolitan Area	
(Draper to Centerville), Tooele	\$100.00 plus tax
St. George/Washington/Springdale	
Hurricane	\$80.00 plus tax
Torrey	\$80.00 plus tax
Tremonton	\$90.00 plus tax
Vernal/Roosevelt/Ballard/Naples	\$95.00 plus tax
All Other Utah Cities	\$70.00 plus tax

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed

the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

(ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

**R25-7-9. Reimbursement for Incidentals.**

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, ~~and~~ transportation costs~~[-]~~, maid service, and bellman.

(a) Tips for ~~maid service,~~ doormen~~[-]~~ and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant[-] or with a state purchase card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls. ~~made during stays of five nights or more.~~

(5) Allowances for personal telephone calls made while out of town on state business overnight ~~will~~ may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night, ~~documentation is not required for personal phone calls made during stays of four nights or less)~~

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

#### **R25-7-10. Reimbursement for Transportation.**

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the economy lot parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 56 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 56 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at 56 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

**KEY: air travel, per diem allowances, state employees, transportation**

**Date of Enactment or Last Substantive Amendment: [April 21,] 2015**

**Notice of Continuation: April 15, 2013**

**Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106**

**Administrative Services, Purchasing  
and General Services  
R33-4**

**General Procurement Provisions,  
Prequalifications, Specifications, and  
Small Purchases**

**NOTICE OF PROPOSED RULE  
(Amendment)**

**DAR FILE NO.: 39327**

**FILED: 04/30/2015**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add additional sections to the rule that clarify procedures and address the use of electronic, telephone, or written quotes.

**SUMMARY OF THE RULE OR CHANGE:** The changes: add procedures when two bids quotes, or statement of qualifications cannot be obtained, as well as the addition of the use of electronic, telephone, or written quotes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63G-6a-402 and Section 63G-6a-403 and Section 63G-6a-404 and Section 63G-6a-405 and Section 63G-6a-406 and Section 63G-6a-407 and Section 63G-6a-408

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No anticipated costs or savings are expected. This change simply adds additional sections that clarify procedures and address the use of electronic, telephone, or written quotes.
- ◆ **LOCAL GOVERNMENTS:** No anticipated costs or savings are expected. This change simply adds additional sections that clarify procedures and address the use of electronic, telephone, or written quotes.
- ◆ **SMALL BUSINESSES:** No anticipated costs or savings are expected. This change simply adds additional sections that clarify procedures and address the use of electronic, telephone, or written quotes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated costs or savings are expected. This change simply adds additional sections that clarify procedures and address the use of electronic, telephone, or written quotes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance cost because this amendment simply adds additional sections that clarify procedures and address the use of electronic, telephone, or written quotes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated affects that the rule will have on businesses. The amendment simply adds additional sections that clarify procedures and address the use of electronic, telephone, or written quotes.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 ADMINISTRATIVE SERVICES  
 PURCHASING AND GENERAL SERVICES  
 ROOM 3150 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015**

**AUTHORIZED BY: Kimberly Hood, Executive Director**

**R33. Administrative Services, Purchasing and General Services.**

**R33-4. General Procurement Provisions, Prequalifications, Specifications, and Small Purchases.**

**R33-4-101. Prequalification of Potential Vendors.**

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-402 through 408. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

**R33-4-102. Thresholds for Approved Vendor Lists.**

(1) Public entities may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-403 and 63G-6a-404.

(a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:

(i) Construction Projects: \$2,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;

(ii) Professional and General Services, including architectural and engineering services: \$100,000; and

(iii) Information Technology: \$500,000

(b) Thresholds for other approved vendor lists may be established by the Chief Procurement Officer, or as applicable, [or] the head of a procurement unit with independent procurement authority.

**R33-4-103. Specifications.**

(1) Public entities shall include in solicitation documents specifications for the procurement item(s).

(2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.

(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.

(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.

(a) Rule R33-4-104(3) does not apply to the following:  
 (i) a design build construction project; and  
 (ii) other procurements determined in writing by the chief procurement officer, or as applicable, ~~or~~ the head of a procurement unit with independent procurement authority.

(b) Violations of this Rule R33-4-104(3) may result in:  
 (i) the bidder or offeror being declared ineligible for award of the contract;

(ii) the solicitation being canceled;  
 (iii) termination of an awarded contract; or  
 (iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, ~~or~~ the head of a procurement unit with independent procurement authority.

(4) Brand Name or Equal Specifications.

(a) Brand name or equal specifications may be used when:  
 (i) "or equivalent" reference is included in the specification;

and,  
 (ii) as many other brand names as practicable are also included in the specification.

(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.

(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.

(5) Brand Name Sole Source Requirements.

(a) If only one brand can meet the requirement, the procurement unit shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and.

(b) If there is only one provider that can meet the requirement, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802.

#### **R33-4-104. Small Purchases.**

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-408. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) "Small Purchase" means a procurement conducted by a procurement unit that does not require the use of a standard procurement process.

(2) Small Purchase thresholds:

(a) The "Individual Procurement" threshold is a maximum amount of \$1,000 for a procurement item;

(i) For individual procurement item(s) costing up to \$1,000, an entity subject to these rules may select the best source by direct award and without seeking competitive bids or quotes.

(a) The single procurement aggregate threshold is a maximum amount of \$5,000 for multiple procurement item(s) purchased from one source at one time; and

(b) The annual cumulative threshold from the same source is a maximum amount of \$50,000.

(3) Whenever practicable, the Division of Purchasing and General Services and entities subject to these rules shall use a rotation

system or other system designed to allow for competition when using the small purchases process.

#### **R33-4-105. Small Purchases Threshold for Architectural and Engineering Services.**

(1) The small purchase threshold for architectural or engineering services is a maximum amount of \$100,000.

(2) Architectural or engineering services may be procured up to a maximum of \$100,000, by direct negotiation after reviewing the qualifications of a minimum of three architectural or engineering firms.

(3) Procurement units subject to these rules shall follow the process described in Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 of the to develop an approved vendor list or Part 15 of the Utah Procurement Code for the selection of architectural and engineering services.

(4) Procurement units that are subject to these rules shall include minimum specifications when using the small purchase threshold for architectural and engineering services.

(5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division in the procurement of architectural or engineering services.

#### **R33-4-106. Small Purchases Threshold for Construction Projects.**

(1) The small construction project threshold is a maximum of \$2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) Procurement units subject to these rules shall follow the process described in the Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 to develop an Approved Vendor List or other applicable selection methods described in the Utah Procurement Code for construction services.

(3) Procurement units subject to these rules shall include minimum specifications when using the small purchases threshold for construction projects.

(4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing and General Services in the procurement of small construction projects.

(5) The chief procurement officer, or as applicable, ~~or~~ the head of a procurement unit with independent procurement authority, may procure small construction projects up to a maximum of \$25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.

(6) The chief procurement officer, or as applicable, ~~or~~ the head of a procurement unit with independent procurement authority, may procure small construction projects costing more than \$25,000 up to a maximum of \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(7) If an approved vendor list is not established under Sections 63G-6a-403 and 404, procurement units shall procure

construction projects over \$100,000 using an invitation to bid or other approved source selection method outlined in the Utah Procurement Code.

**R33-4-107. Quotes for Small Purchases from \$1,001 to \$50,000.**

(1) For procurement item(s) where the cost is greater than \$1,000 but up to a maximum of \$5,000, an entity subject to these rules shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than \$5,000 up to a maximum of \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing more than \$5,000 up to a maximum of \$50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

(5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

**R33-4-108. Small Purchases of Services of Professionals, Providers, and Consultants.**

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000.

(2) After reviewing the qualifications of a minimum of two professional service providers or consultants, the chief procurement officer, or as applicable, [Ø]the head of a procurement unit with independent procurement authority, may obtain professional services or consulting services:

(a) up to a maximum of \$50,000 by direct negotiation; or

(b) over \$50,000 up to a maximum of \$100,000 by obtaining a minimum of two quotes.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division in the procurement of professional services or consulting services.

**R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.**

(1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following circumstances:

(a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-406 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;

(b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or

(c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.

(i) Reasonable effort shall mean:

(A) Public notice under Utah Code 63G-6a-406;

(B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;

(C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or

(D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.

(2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:

(a) whether pricing is fair and reasonable as set forth in R33-6-109(1);

(b) canceling the procurement as set forth in R33-9-103; and

(c) bid security requirement as set forth in R33-11-202.

(3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

**R33-4-110. Use of Electronic, Telephone, or Written Quotes.**

(1) Quote means an informal purchasing process which solicits pricing information from several sources.

(2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and

(a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) The procurement unit maintains a public record that includes:

(i) The name of each vendor supplying a quotation; and

(ii) The amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) May obtain electronic, telephone, or written quotations for a procurement item costing less than \$5,000;

(b) Shall send a request to obtain quotations for a procurement item costing more than \$5,000 to the division of state purchasing;

(i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than \$5,000; and

(c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

**KEY: government purchasing, general procurement provisions, specifications, small purchases**

**Date of Enactment or Last Substantive Amendment: ~~July 8, 2014~~ 2015**

**Notice of Continuation: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## Administrative Services, Purchasing and General Services

### R33-8

## Exceptions to Procurement Requirements

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39328

FILED: 04/30/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add additional waivers to the requirement for publications of notice for a sole source procurement, and remove the alternative procurement methods section.

**SUMMARY OF THE RULE OR CHANGE:** Additional waivers have been added to the requirement for publications of notice for a sole source procurement, and the section addressing alternative procurement methods is being deleted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6a-802

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. This change only addresses additional waivers to the requirement for publications of notice for a sole source procurement, and the section addressing alternative procurement methods is being deleted.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. This change only addresses additional waivers to the requirement for publications of notice for a sole source procurement, and the section addressing alternative procurement methods is being deleted.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. This change only addresses additional waivers to the requirement for publications of notice for a sole source procurement, and the section addressing alternative procurement methods is being deleted.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. This change only addresses additional waivers to the requirement for publications of notice for a sole source procurement, and the section addressing alternative procurement methods is being deleted.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs because this amendment simply adds additional waivers to the requirement for publications of notice for a sole source procurement, and the section addressing alternative procurement methods is being deleted.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated affects that the rule will have on businesses. The amendment simply adds additional waivers to the requirement for publications of notice for a sole source procurement, and the section addressing alternative procurement methods is being deleted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
PURCHASING AND GENERAL SERVICES  
ROOM 3150 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov  
◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov  
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Kimberly Hood, Executive Director

### R33. Administrative Services, Purchasing and General Services.

#### R33-8. Exceptions to Procurement Requirements.

##### R33-8-101. Sole Source - Award of Contract Without Competition.

(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Procurement Code.

(2) A sole source procurement may be conducted if:

(a) there is only one source for the procurement item;

(b) the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or

(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.

(4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority for approval.

(5) The sole source request shall be submitted to the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, and shall include:

(a) a description of the procurement item;

(b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(c) the duration of the proposed sole source contract;

(d) an authorized signature of the conducting procurement unit;

(e) unless the sole source procurement is conducted under Rule R33-8-101-2(b) or (c), research completed by the conducting procurement unit documenting that there are no other competing sources for the procurement item;

(f) any other information requested by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority; and

(6) a sole source request form containing all of the requirements of Rule R33-8-101(5) shall be available on the division's website.

(7) Except as provided in (b), sole source procurements over \$50,000 shall be published in accordance with Section 63G-6a-406.

(a) Sole source procurements ~~[under]~~ of \$50,000 or less are not required to be published but may be published at the discretion of the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(b) The requirement for publication of notice for a sole source procurement is waived for:

(i) ~~[for]~~ public utility services;

~~(ii) conference and convention facilities and services;~~

~~(iii) conference fees, including materials;~~

~~(iv) membership dues;~~

~~(v) speakers or trainers and associated training materials;~~

~~(vi) hosting of out-of-state and international dignitaries;~~

~~(vii) promotion by a public entity;~~

~~(viii) an award when the Legislature identifies the intended recipient of a contract;~~

~~[(ix)]~~ ~~(ix)~~ ~~[if the]~~ an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or

~~[(x)]~~ ~~(x)~~ ~~[for]~~ other circumstances as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(8) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406 by submitting the following information in writing to the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority:

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.

(9) Upon receipt of information contesting a sole source procurement, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

##### R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802, Utah Procurement Code.

##### R33-8-301. ~~[Alternative Procurement Methods.]Reserved.~~

~~[(1)]~~ ~~(1)~~ ~~The chief procurement officer or head of a procurement unit with independent procurement authority, may utilize alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, to be more practicable or advantageous to the procurement unit:~~

~~(a) used vehicles;~~

~~(b) livestock;~~

~~(c) hotel conference facilities and services;~~

~~(d) speaker honorariums;~~

~~(e) hosting out-of-state and international dignitaries;~~

- ~~\_\_\_\_\_ (f) international promotion of the state; and~~
- ~~\_\_\_\_\_ (g) any other procurement item for which a standard procurement method is not reasonably practicable.~~
- ~~\_\_\_\_\_ (2) When making this determination, the chief procurement officer or head of a procurement unit with independent procurement authority may take into consideration whether:~~
  - ~~\_\_\_\_\_ (a) the potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;~~
  - ~~\_\_\_\_\_ (b) the procurement item cannot be acquired through a standard procurement process; and~~
  - ~~\_\_\_\_\_ (c) the price of the procurement item is fair and reasonable.~~
- ~~\_\_\_\_\_ (3) In the event that it is so determined, the chief procurement officer or head of a procurement unit with independent procurement authority may elect to utilize an alternative procurement method which may include:~~
  - ~~\_\_\_\_\_ (a) informal price quotations;~~
  - ~~\_\_\_\_\_ (b) direct negotiations; and,~~
  - ~~\_\_\_\_\_ (c) direct award.~~

**R33-8-401. Emergency Procurement.**

- (1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.
- (2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.
- (3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.
  - (a) Circumstances that may create harm or risk to health, welfare, safety, or property include:
    - (i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;
    - (ii) failure or eminent failure of a public building, equipment, road, bridge or utility;
    - (iii) terrorist activity;
    - (iv) epidemics;
    - (v) civil unrest;
    - (vi) events that impair the ability of a public entity to function or perform required services;
    - (vii) situations that may cause harm or injury to life or property; or
    - (viii) other conditions as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
- (4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.
- (5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.
- (6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be

kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

**R33-8-501. Declaration of "Official State of Emergency".**

Upon a declaration of an "Official State of Emergency" by the authorized state official, the chief procurement officer shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

**KEY: government purchasing, exceptions to procurement requirements, emergency procurement[, alternative procurement methods]**

**Date of Enactment or Last Substantive Amendment: [July 8, 2014]2015**

**Notice of Continuation: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

**Alcoholic Beverage Control,  
Administration  
R81-1-26  
Criminal History Background Checks**

**NOTICE OF PROPOSED RULE  
(Amendment)**

**DAR FILE NO.: 39329  
FILED: 04/30/2015**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to implement S.B. 198 passed by the legislature in the 2015 General Session, which modified procedures for collecting and storing of background checks.

**SUMMARY OF THE RULE OR CHANGE:** Due to the passage of S.B. 198, Section R81-1-26 needs to be amended to account for the changes in procedures for collecting and storing background checks. In addition to modifications to incorporate the legislative changes, the department will be amending the rule to address the following: starting 07/01/2015 a new system will be maintained by Utah's Bureau of Criminal Identification that will maintain background checks for applicable individuals. The new system will also notify the DABC if an applicable individual later has a conviction. Therefore, as of 07/01/2015 any new applicant will be required to submit to a new background check, regardless of whether the department has a background check on file. This rule eliminates the requirement for third party background checks to be submitted to the department as part of the application process. Applicants will continue to be required to attest that they have no disqualifying offenses

and that they stipulate that they will surrender the license if a disqualifying offense if the background check reveals a disqualifying offense.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-1-305 and Section 32B-1-306 and Section 32B-1-307 and Section 32B-1-607 and Section 32B-2-202 and Section 32B-5-304 and Section 32B-6-702 and Subsection 32B-1-304(1)(a) and Subsection 32B-2-201(10) and Subsection 32B-3-203(3)(c) and Subsection 32B-6-805(3) and Subsection 32B-9-204(4) and Subsections 32B-4-414(1)(b) and (c)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--This rule is necessary to implement S.B. 198, passed by the legislature in the 2015 General Session. Any additional cost of or savings to state budget is due to the change in statute related to fees for retention at the Bureau of Criminal Identification and uniform background check fees for all individuals and not as a result of this rule amendment.

◆ LOCAL GOVERNMENTS: None--This rule is necessary to implement S.B. 198, passed by the legislature in the 2015 General Session. There are no anticipated cost or savings to local government.

◆ SMALL BUSINESSES: None--This rule is necessary to implement S.B. 198, passed by the legislature in the 2015 General Session. Any additional cost of or savings to small businesses is due to the change in statute related to fees for retention at the Bureau of Criminal Identification and uniform background check fees for all individuals and not as a result of this rule amendment.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule is necessary to implement S.B. 198, passed by the legislature in the 2015 General Session. Any additional cost of or savings to persons other than small businesses, businesses or local government entities is due to the change in statute related to fees for retention at the Bureau of Criminal Identification and uniform background check fees for all individuals and not as a result of this rule amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule is necessary to implement S.B. 198, passed by the legislature in the 2015 General Session. Any compliance costs are due to the change in statute related to fees for retention at the Bureau of Criminal Identification and uniform background check fees for all individuals and not as a result of this rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule is necessary to implement S.B. 198, passed by the legislature in the 2015 General Session. Any fiscal impact on businesses is due to the change in statute related to fees for retention at the Bureau of Criminal Identification and uniform background check fees for all individuals and not as a result of this rule amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Andrew Hofeling by phone at 801-977-6835, by FAX at 801-977-6888, or by Internet E-mail at ahofeling@utah.gov  
◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-1. Scope, Definitions, and General Provisions.**

**R81-1-26. Criminal History Background Checks.**

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32B-2-202 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32B-1-301 to -307 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32B-1-301 to -307 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must ~~submit to a background check to~~ ~~provide the department with a criminal history background report that~~ show[s] the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background ~~checks~~ ~~reports~~.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a) ~~(ii), (iii), and (iv), [(v), (vi), and (vii)]~~ a person identified in Subparagraph (1)(b) ~~[who has been a resident of the state of Utah for at least two years,]~~ shall ~~submit a fingerprint card to the department, and]~~ consent to a ~~fingerprint~~ criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.") ~~and the Federal Bureau of Investigation (hereinafter "F.B.I").~~

~~(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I."):~~

~~(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.~~

~~(ii)(iv) A person identified in Subparagraph (1)(b) who [previously] submitted a criminal background check on or after July 1, 2015 [as part of the application process for a different license, permit, or package agency that was issued by the commission] shall not be required to submit to a background check [a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency] if the department can confirm that the individual has maintained a regulatory or employment relationship as outlined in the department's privacy risk mitigation strategy required by 32B-1-307(4)(iv)(b), [if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b)].~~

~~(v)iii) An applicant for an [single] event permit under 32B-9 shall not be required to submit to a background check [a fingerprint card or provide a criminal history background report] if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.~~

~~(vi) An applicant for a temporary special event beer permit under 32B-9 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).~~

~~(iv)ii) An applicant for employment with benefits with the department shall be required to submit to a background check [a fingerprint card and consent to a fingerprint criminal background check only] if the department has made the decision to offer the applicant employment with the department.~~

~~(b) An application that requires [B.C.I. or F.B.I. criminal history] background [report] checks(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:~~

~~(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required [B.C.I. or F.B.I.] criminal history background report(s);~~

~~(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;~~

~~(iii) the applicant has submitted to a background check in a form acceptable to the department [the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.]; and~~

~~(iv) the applicant at the time of application supplies the department with a current criminal history background report~~

~~conducted by a third-party background check reporting service on any person for which a B.C.I. or an F.B.I. background check is required; and~~

~~(iv) the applicant stipulates in writing that if a [B.C.I. or an F.B.I.] criminal history background report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.~~

~~(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. [or] and F.B.I. is processing the criminal history report(s).~~

~~(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.~~

~~(e) If the required B.C.I. or F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.~~

~~(f)d) Upon the department's receipt of the [B.C.I. or F.B.I.] criminal history background report(s):~~

~~(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or~~

~~(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.~~

~~(g)e) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of [the B.C.I. or F.B.I.] criminal history background report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through ([f]e).~~

~~(h)f) An applicant for employment with benefits with the department that requires a [B.C.I. or an F.B.I. criminal history] background [report] check may be conditionally hired by the department prior to receipt of the report if:~~

~~(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;~~

~~(ii) the applicant has submitted to a background check in a form acceptable to the department [the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.];~~

~~(iii) the applicant stipulates in writing that if a [B.C.I. or an F.B.I.] criminal history background report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.~~

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [April 29, 2014] 2015**

**Notice of Continuation: May 10, 2011**

**Authorizing, and Implemented or Interpreted Law:** 32B-2-201(10); 32B-2-202; 32B-3-203(3)(c); 32B-5-304; 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (c)

**Alcoholic Beverage Control,  
Administration  
R81-2-9  
Accepting Credit Cards as Payment for  
Liquor**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39330

FILED: 04/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This section is removed to allow the director to make internal department policies regarding a payment for products.

**SUMMARY OF THE RULE OR CHANGE:** This change removes the prohibition of credit card sales by licensees and will also move operational requirements regarding the use of credit cards to department policies.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any cost to the state has been authorized by the legislature through the budgetary process and not as a result of this rule amendment.

♦ **LOCAL GOVERNMENTS:** This rule is necessary to authorize the director to make internal department policies regarding payment for products and does not affect local government. Therefore will not incur any cost or savings to local government.

♦ **SMALL BUSINESSES:** This rule is necessary to authorize the director to make internal department policies payment for products. There will be no anticipated cost or savings for small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is necessary to authorize the director to make internal department policies regarding payment for products. There will be no anticipated cost or savings for persons other than small businesses, businesses or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any changes to the program will not have compliance costs passed on to the consumer without going through the fee assessment processes outlined in Section 63J-1-504.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any fiscal impact has been authorized by the legislature through the budgetary process and not as a result of this rule amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ALCOHOLIC BEVERAGE CONTROL

ADMINISTRATION

1625 S 900 W

SALT LAKE CITY, UT 84104-1630

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Andrew Hofeling by phone at 801-977-6835, by FAX at 801-977-6888, or by Internet E-mail at ahofeling@utah.gov

♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.****R81-2. State Stores.****R81-2-9. [~~Accepting Credit Cards as Payment for Liquor.~~ Reserved.]**

[~~(1) Purpose. This rule explains the procedures to be followed by state liquor store employees in accepting credit cards for the purchase of alcoholic beverages.~~

[~~(2) Application of Rule:~~

[~~(a) The owner of the credit card must furnish the cashier with their actual credit card. No sale may be based on the customer merely furnishing a credit card number, or another person's credit card, including that of their spouse.~~

[~~(b) The cashier shall examine the security features on the card such as signature, account number, expiration date, and hologram before accepting the card.~~

[~~(c) The card must be signed by the card holder.~~

[~~(d) If for any reason the credit card cannot be scanned, the cashier shall hand-key the credit card number into the cash register keyboard. If the transaction is approved, the cashier shall imprint a copy of the credit card, and have the card holder sign it.~~

~~\_\_\_\_\_ (e) After the cashier scans or hand-keys a credit card, the credit card company may approve or reject the transaction. A rejection may indicate that the card has been stolen, the customer's account is over-drawn, the card has expired, or some other problem. The cashier may receive several messages from the credit card company.~~

~~\_\_\_\_\_ (i) If the message is "decline" or "card not accepted", the cashier should return the card to the customer, suggest another form of payment, and suggest that the customer contact the issuer of the card.~~

~~\_\_\_\_\_ (ii) If the message is "call" or "call hold", the store employee should hold the card and either phone the credit card company's voice authorization center for more information, or enter a "code 10" request. The voice authorization center may instruct that the card be confiscated. The card should then be obtained only if it can be done by peaceful means, and if the card holder voluntarily agrees to surrender the card. The "code 10" request will result in the credit card company researching the status of the card and approving the transaction with a "yes" or rejecting the transaction with a "no" prompt. At no time should store employees put themselves at risk by confiscating a credit card against the desires of the cardholder. If the card can be willingly surrendered and confiscated, the store employee should destroy the card by cutting it in half lengthwise shortly after leaving the customer's presence. The card pieces should then be sent to the card owner's bank with a completed ABC Department LQ-55 form having been filled out by a store employee.~~

~~\_\_\_\_\_ (f) Credit card receipts contain confidential information that must be safeguarded. Cashiers should not throw the receipts in the trash. State store managers and their employees should consult their regional manager concerning proper storage and disposal of receipts.~~

~~\_\_\_\_\_ (g) Refunds, or exchanges of products of unequal value that were purchased with a credit card, shall be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.~~

~~\_\_\_\_\_ (h) Licensee purchases may not be paid by credit card. Licensee purchases may be only in cash or by check.~~

~~\_\_\_\_\_ ]~~

**KEY:** alcoholic beverages  
**Date of Enactment or Last Substantive Amendment:** ~~[April 30, 2013]~~**2015**  
**Notice of Continuation:** May 10, 2011  
**Authorizing, and Implemented or Interpreted Law:** 32B-2-202

**Alcoholic Beverage Control,  
Administration  
R81-3-19  
Credit Cards**

**NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 39331  
FILED: 04/30/2015**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This section is removed to authorize the director

to make internal department policies regarding payment for products.

**SUMMARY OF THE RULE OR CHANGE:** This filing removes the prohibition of credit card sales by licensees and will also move operational requirements regarding the use of credit cards to department policies.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any cost to the state has been authorized by the legislature through the budgetary process and not as a result of this rule amendment.

◆ **LOCAL GOVERNMENTS:** This rule is necessary to authorize the director to make internal department policies regarding payment for products and does not affect local government. Therefore will not incur any cost or savings to local government.

◆ **SMALL BUSINESSES:** This rule is necessary to authorize the director to make internal department policies payment for products. There will be no anticipated cost or savings for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is necessary to authorize the director to make internal department policies regarding payment for products. There will be no anticipated cost or savings for persons other than small businesses, businesses or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any changes to the program will not have compliance costs passed on to the consumer without going through the fee assessment processes outlined in Section 63J-1-504.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any fiscal impact has been authorized by the legislature through the budgetary process and not as a result of this rule amendment.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Andrew Hofeling by phone at 801-977-6835, by FAX at 801-977-6888, or by Internet E-mail at ahofeling@utah.gov  
 ◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.****R81-3. Package Agencies.****R81-3-19. [~~Credit Cards.~~Reserved.]**

~~[(1) Purpose. This rule explains the procedures to be followed by consignment package agents in accepting credit cards for the purchase of alcoholic beverages.~~

~~(2) Application of Rule.~~

~~(a) Licensee purchases may not be paid by credit card. The department will accept only checks and cash from licensees.~~

~~(b) Refunds, or exchanges of products of unequal value, will be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.~~

~~(c) The cashier, when applicable, shall examine the security features of the card such as signatures, account numbers, expiration date, hologram, etc., before accepting any card.~~

~~(d) No sale may be made without the credit card. Merely having the credit card number available is not acceptable.~~

~~(e) All credit cards must be signed by the card holder.~~

~~(f) Customers may not use another person's credit card, including their spouse's card.~~

~~(g) Credit card receipts contain confidential information that needs to be safeguarded. Cashiers should not throw them in the trash. Consignment package agents and their employees should consult their audit manager concerning proper storage and disposal of such receipts. Package agents will mail all receipts to the department on a weekly basis for long term storage.~~

~~(h) If for any reason the credit card cannot be scanned, the credit card number should be hand keyed into the credit card machine keyboard. Validate the card with an ID and have the customer sign the printout or electronic pad.~~

]

**KEY:** alcoholic beverages

**Date of Enactment or Last Substantive Amendment:** [~~July 17, 2012~~]**2015**

**Notice of Continuation:** May 10, 2011

**Authorizing, and Implemented or Interpreted Law:** 32B-2-202

Commerce, Occupational and  
Professional Licensing  
**R156-63a**  
Security Personnel Licensing Act  
Contract Security Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39293

FILED: 04/21/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Security Services Licensing Board reviewed the rule and found changes that need to be made.

**SUMMARY OF THE RULE OR CHANGE:** Subsections R156-63a-502(2) and (3) reference a section of rule that was deleted in a January 2011 rule filing and as a result, those sections need to be deleted. In Section R156-63a-609, a rule change in 2014 deleted the requirement for a copy of a Utah specific driver license or Utah specific identification card for security personnel as a qualification for licensure. Therefore, operating standards in this section also need to reflect the change. References to Utah specific identification card and driver license are updated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-63-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply only to licensed unarmed and armed private security officers and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments apply only to licensed unarmed and armed private security officers and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business. An unquantifiable amount may be saved by potential employees receiving licenses quicker, due to not having to wait for the Utah specific identification card or driver license being issued.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments apply only to licensed unarmed and armed private security officers and applicants for licensure in those classifications. The Division does not anticipate any costs or savings for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to licensed unarmed and armed private security officers and applicants for licensure in those classifications. An unquantifiable amount may be saved by an individual due to not having to wait for the Utah specific identification card or driver license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing deletes language that has been rendered obsolete by prior filings. No fiscal impact to businesses is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/18/2015 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-63a. Security Personnel Licensing Act Contract Security Rule.**

**R156-63a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) ~~employing an unarmed or armed private security officer, as an on-the-job trainee exempted from licensure pursuant to Section R156-63a-307, who has been convicted of:~~

~~(a) a felony;~~

~~(b) a misdemeanor crime of moral turpitude; or~~

~~(c) a crime that when considered with the duties and functions of an unarmed or armed private security officer by the Division and Board indicates that the best interests of the public are not served;~~

~~(3) employing an unarmed or armed private security officer who fails to meet the requirements of Section R156-63a-307;~~

~~(4) utilizing a vehicle [whose]with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;~~

~~(5) utilizing a vehicle with an emergency lighting system [which]that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;~~

~~(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;~~

~~(7) being incompetent or negligent as an unarmed private security officer, an armed private security officer, or [by]a contract security company, so as to cause[ that results in] injury to a person or [that]create[s] an unreasonable risk that a person [may]might be harmed;~~

~~(8) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees [to the extent that]so as to place the public health and safety [are]at risk;~~

~~(9) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;~~

~~(10) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613; and~~

~~(11) wearing a [n] uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company.~~

**R156-63a-609. Operating Standards - Proper Identification of Private Security Officers.**

All armed and unarmed private security officers shall carry a valid security license together with a government-issued[Utah] identification card ~~[issued by the Division of Driver License]~~ or a current state-issued[Utah driver's] driver license whenever performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

**KEY: licensing, security guards, private security officers**

**Date of Enactment or Last Substantive Amendment:**  
**[November 24, 2014]2015**

**Notice of Continuation: September 9, 2013**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101**

**Commerce, Occupational and  
Professional Licensing  
R156-63b  
Security Personnel Licensing Act  
Armored Car Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39294

FILED: 04/21/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Security Services Licensing Board reviewed the rule and found changes that need to be made.

**SUMMARY OF THE RULE OR CHANGE:** Subsections R156-63b-502(2) and (3) reference a section of rule that was deleted in a January 2011 rule filing and as a result, those sections need to be deleted. In Section R156-63b-609, a rule change in 2014 deleted the requirement for a copy of a Utah specific driver license or Utah specific identification card for security personnel as a qualification for licensure. Therefore, operating standards in this section also need to reflect the change. References to Utah specific identification card and driver license are updated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-63-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendments apply only to licensed armored car security officers and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments apply only to licensed armored car security officers and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business. An unquantifiable amount may be saved by potential employees receiving licenses quicker, due to not having to wait for the Utah specific identification card or driver license being issued.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply only to licensed armored car security officers and applicants for licensure in that classification. The Division does not anticipate any costs or savings for other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments apply only to licensed armored car security officers and applicants for licensure in that classification. An unquantifiable amount may be saved by an individual due to not having to wait for the Utah specific identification card or driver license.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As stated in the rule analysis, this filing deletes language that has been rendered obsolete by prior filings. No fiscal impact to businesses is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/18/2015 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-63b. Security Personnel Licensing Act Armored Car Rule.**

**R156-63b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) ~~employing an armored car security officer by an armored car company, as an on-the-job trainee pursuant to Section R156-63b-307, who has been convicted of:~~

~~(a) a felony;~~

~~(b) a misdemeanor crime of moral turpitude; or~~

~~(c) a crime that when considered with the duties and functions of an armored car security officer by the Division and the Board indicates that the best interests of the public are not served;~~

~~(3) employing an armored car security officer by an armored car company who fails to meet the requirements of Section R156-63b-307;~~

~~(4) utilizing a vehicle [whose]with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;~~

~~(5) utilizing a vehicle with an emergency lighting system [which]that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;~~

~~(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;~~

~~(7) being incompetent or negligent as an armored car security officer or [by]as an armored car company [that results in]so as to cause injury to a person or [that]create[s] an unreasonable risk that a person [may]might be harmed;~~

~~(8) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees [to the extent that]so as to place the public health and safety [are]at risk;~~

~~(9) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;~~

~~(10) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612; and~~

~~(11) wearing a[n] uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company.~~

**R156-63b-609. Operating Standards - Proper Identification of Armored Car Security Officers.**

All armored car security officers shall carry a valid security license together with a ~~government-issued[Utah]~~ identification card ~~[issued by the Division of Driver License-]or~~ a current ~~state-issued driver[Utah-driver's]~~ license whenever performing the duties of an armored car security officer and shall exhibit said license and identification upon request.

**KEY: licensing, security guards, armored car security officers, armored car company**

**Date of Enactment or Last Substantive Amendment: [December 8, 2014]2015**

**Notice of Continuation: September 9, 2013**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101**

**Commerce, Real Estate  
R162-2f-401j  
Standards for Property Management**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 39305  
FILED: 04/27/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify that within 30 days of the termination of a contract for property management services, the principal broker must deliver all trust money to the property owner, the property owner's designated agent, or to another party as designated by contract between the principal broker and the property owner.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies that within 30 days of the termination of a contract for property management services, the principal broker must deliver all trust money to the property owner, the property owner's designated agent, or to another party as designated by contract between the principal broker and the property owner.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 61-2f-103 and Section 61-2f-401

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The division has the staff and budget in place to administer this provision. It is not anticipated that the proposed amendment will affect those resources or result in any additional cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the real estate licensing and practices rules. No fiscal impact to local government is expected from the proposed amendment.

♦ **SMALL BUSINESSES:** This amendment clarifies the process of when and to whom trust funds must be delivered following the termination of a contract for management services. The amendment does not create a new obligation nor does it increase the cost associated with any existing obligation arising from the contract. No fiscal impact to small business is expected from the proposed amendment.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment clarifies the process of when and to whom trust funds must be delivered following the termination of a contract for management services. The amendment does not create a new obligation nor does it increase the cost associated with any existing obligation arising from the contract. No fiscal impact to other persons is expected from the proposed amendment.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment clarifies the process of when and to whom trust funds must be delivered following the termination of a contract for property management services. The amendment does not create a new obligation nor does it increase the cost associated with an existing obligation which may arise from

the contract. No fiscal impact to affected persons is expected from the proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing is made to clarify existing language setting forth circumstances under which a property manager is required to return to a property owner funds held in a trust account. No fiscal impact to businesses is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
REAL ESTATE  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Jonathan Stewart, Director

#### **R162. Commerce, Real Estate.**

##### **R162-2f. Real Estate Licensing and Practices Rules.**

##### **R162-2f-401j. Standards for Property Management.**

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling all duties related to supervision per Section 61-2f-401(12), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including this Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

- (a) providing a prospective tenant with access to a rental unit;
- (b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of ~~the termination of~~~~[terminating]~~ a contract with a property owner for property management services, the principal broker shall ~~deliver all trust money~~~~[return]~~ to the property owner, ~~[or]~~the property owner's designated agent, ~~or other party as designated under the contract with the property owner.~~~~[all trust money that:~~

~~\_\_\_\_\_ (a) is due to the property owner; or~~

~~\_\_\_\_\_ (b) is being held for the benefit of the property owner or the owner's property.~~

]

**KEY: real estate business, operational requirements, trust account records, notification requirements**

**Date of Enactment or Last Substantive Amendment: [January 21,]2015**

**Authorizing, and Implemented or Intepreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307**

## Commerce, Securities **R164-32** Codification of Precedent

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39300

FILED: 04/27/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to incorporate principles and interpretations of law that are articulated in final agency orders.

**SUMMARY OF THE RULE OR CHANGE:** Holdings set forth in final orders issued in formal administrative proceedings are codified. The principles of law addressed include the limited liability company exemption set forth in Subsection 61-1-13(1)(ee)(ii)(B); the common enterprise language of Subsection 61-1-13(1)(s)(i); the false statement/material omission language of Subsection 61-1-1(2); and statutes of limitation, including that set forth in Section 61-1-21.1.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 61-1-21.1 and Section 61-1-24 and Subsection 61-1-1(2) and Subsection 61-1-13(1)(ee)(ii)(B) and Subsection 61-1-13(1)(s)(i) and Subsection 63G-3-201(2) and Subsection 63G-3-201(3) and Subsection 63G-3-201(6)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Promulgating this rule will not create any direct costs for the Division. It is anticipated that the rule will assist respondents in understanding Division precedent. As a result, it will likely encourage settlement and allow the Division to avoid the costs of litigation. The amount of potential savings cannot be quantified or estimated.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the rules that regulate the securities industry. No fiscal impact to local government is anticipated.
- ◆ **SMALL BUSINESSES:** Small businesses that are party to a Division administrative action may use the rule to identify controlling precedent quickly and efficiently. It is anticipated that making this information readily available will result in meaningful savings to small businesses that must prepare a case for hearing. The amount of potential savings cannot be quantified or estimated.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons who are party to a Division administrative action may use the rule to identify controlling precedent quickly and efficiently. It is anticipated that making this information readily available will result in meaningful savings to persons who must prepare a case for hearing. The amount of potential savings cannot be quantified or estimated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The rule articulates principles of law. It does not require compliance. No compliance costs are anticipated.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As stated in the rule analysis, this filing codifies principles and interpretations of law that are articulated in final agency orders. A business that is involved in an administrative proceeding before the Securities Commission may use the rule to research established precedent in an efficient manner and, therefore, avoid costs that otherwise might be necessary in order to prepare a case for hearing. Otherwise, no fiscal impact to businesses is anticipated.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

COMMERCE  
 SECURITIES  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at [jjonsson@utah.gov](mailto:jjonsson@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015**

**AUTHORIZED BY: Keith Woodwell, Director**

**R164. Commerce, Securities.**

**R164-32. Codification of Precedent.**

**R164-32-1. Codification of Precedent.**

- (1) Authority and purpose.
  - (a) The Division enacts this rule pursuant to Utah Code Subsections 63G-3-201(2), (3), (6) and Section 61-1-24.
  - (b) This rule incorporates the principles of law:
    - (i) that are established by final adjudicative decisions by the Utah Securities Commission, the Division Director, or an Administrative Law Judge; and
    - (ii) where:
      - (A) agency action meets criteria requiring rulemaking as set forth in the Utah Administrative Rulemaking Act; or
      - (B) the Division issues a written interpretation of a state or federal legal mandate.
- (2) Limited liability company exemption, Section 61-1-13(1)(ee)(ii)(B). Pursuant to SD-12-0076 (Aug. 8, 2013), a material issue of fact as to whether a respondent may claim the limited liability company exemption is created by a single investor's sworn statement that the investor:
  - (a) purchased shares in an LLC solely for investment purposes;
  - (b) took no part in the management of the LLC; or
  - (c) was geographically distant from the activities through which the LLC was managed.
- (3) Common enterprise, Section 61-1-13(1)(s)(i). Pursuant to SD-13-0018, 0019, 0020 (Nov. 8, 2013), a common enterprise includes a circumstance in which value tendered by an offeree is:
  - (a) deposited into the offerer's personal or business financial account(s); and
  - (b) subjected to the offerer's personal control and oversight.
- (4) False statement or material omission, Section 61-1-1(2).
  - (a) Pursuant to SD-13-0018, 0019, 0020 (Nov. 8, 2013), a rebuttable presumption of material omission is created by an investor's sworn statement that, had a certain piece of information been provided, it would have caused the investor to:
    - (i) question or disbelieve representations made by the offerer in connection with the transaction; or
    - (ii) decline to purchase the offered security.
  - (b) Pursuant to SD-11-0041, 0042 (April 7, 2014), an offerer makes a material omission by failing to disclose:
    - (i) specific information about the investment itself, including:
      - (A) the identity of the person to whom funds will be entrusted;
      - (B) the track record of the investment; or
      - (C) risk factors; or
    - (ii) the offerer's:
      - (A) criminal history;
      - (B) regulatory history; or
      - (C) financial history, including:
        - (I) bankruptcies; or
        - (II) civil judgments.

(c) Pursuant to SD-13-0030 (Oct. 14, 2014), an offerer makes a material omission by failing to disclose:

(i) specific information about the investment itself, including:

(A) financial statements of the common enterprise;

(B) history of late or missed payments to investors;

(C) methodology for valuing shares or similar investment units;

(D) basis for any unit value that is represented or anticipated as deriving from:

(I) future sale of the units;

(II) future sale or acquisition of the common enterprise;

or

(II) any similar future event; or

(E) registration status of the security being offered; or

(ii) the offerer's:

(A) tax liens; or

(B) licensure or lack thereof.

(d) Pursuant to SD-11-0041, 0042 (April 7, 2014), it is not necessary that money change hands or that an investor suffer a financial loss before an administrative action may be taken against an offerer for false statement or material omission.

(e) Pursuant to SD-11-0041, 0042 (April 7, 2014), liability for a false statement or material omission is not limited to the person who creates or first promotes an investment.

(5) Statutes of limitation, including Section 61-1-21.1.

(a) Pursuant to SD-12-0001 (March 27, 2014), the statute of limitation specified in Section 61-1-21.1 is inapplicable to an administrative disciplinary hearing.

(b) Pursuant to SD-14-0039, 0040 (Jan. 6, 2015), there is no statute of limitation applicable to administrative actions filed by the Division under the Uniform Securities Act where no civil complaint is filed.

**KEY: securities regulation, precedent, statutory interpretation**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 61-1-24; 63G-3-201(2); 63G-3-201(3); 63G-3-201(6); 61-1-13(1)(ee)(ii)(B); 61-1-13(1)(s)(i); 61-1-1(2); 61-1-21.1**

## Education, Administration **R277-404** Requirements for Assessments of Student Achievement

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39340

FILED: 05/01/2015

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-404 is amended to provide language that clarifies a parent's/guardian's right to excuse a parent's/guardian's child from taking a state administered

assessment, consistent with the provisions in S.B. 204, Parental Rights in Public Education Amendments, 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: Changes to Rule R277-404 include clarifying the definition of "College readiness assessment" to include the American College Testing exam, (ACT); defining "State administered assessment," and adding significant new language in Section R277-404-6 that provides for a parent/guardian to exempt a parent's child from state administered assessments.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53A-1-603 through 53A-1-611 and Subsection 53A-1-401(3) and Subsection 53A-15-1403(9)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There may be minimal costs to the Utah State Office of Education (USOE) to develop materials required by state law. Any costs will be absorbed within existing budgets and by existing USOE staff.

♦ LOCAL GOVERNMENTS: Changes within definitions and new language providing for exemption of students from state administered assessments will likely not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Changes within definitions and new language providing for exemption of students from state administered assessments will likely not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Changes within definitions and new language providing for exemption of students from state administered assessments will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes within definitions and new language providing for exemption of students from state administered assessments will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

**R277. Education, Administration.**

**R277-404. Requirements for Assessments of Student Achievement.**

**R277-404-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Benchmark reading assessment" means an assessment determined by the Board for students in grade 1 through 3 and administered to students at the beginning, midpoint and end of year;

C. "College readiness assessment" means an assessment adopted by the Board that includes a college admissions test that provides an assessment of language arts, mathematics, and science, that is most commonly used by local universities to assess student preparation for college. The college readiness assessment may include the Armed Services Vocational Aptitude Battery (ASVAB) and a battery of assessments that is predictive of success in higher education. "College readiness assessment" includes the American College Testing exam, (ACT).

D. "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

E. "English Learner (EL) student" means a student who is learning in English as a second language.

F. "English language proficiency assessment" means an assessment designated by the USOE and designed to measure the acquisition of the academic English language for English Learners.

G. "Family Educational Rights and Privacy Act of 1974 (FERPA)," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

H. "Individualized Education Program (IEP)" means an individualized instructional and assessment plan for students who are eligible for special education services under the Individuals with Disabilities Education Act of 2004.

I. "LEA" means local education agency, including local school boards/ public school districts and schools, and charter schools.

J. "National Assessment of Education Progress (NAEP)" is the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

K. "Online Writing Assessment" means a Board-designated online assessment to measure writing performance for students in grades 3 through 11.

L. "Pre-post" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency which has occurred during the school year.

M. "State administered assessment" means a formative, interim, summative SAGE, Utah alternate assessment, benchmark reading assessment, EXPLORE, PLAN or the ACT.

~~[M]~~N. "Student Assessment of Growth and Excellence (SAGE)" means a summative computer adaptive assessment for English language arts grades 3 through 11; mathematics grades 3 through 8, and Secondary I, II, and III; science grades 4 through 8, earth science, biology, physics and chemistry.

~~[N]~~Q. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

~~[O]~~P. "Summative adaptive assessments" means assessments administered upon completion of instruction to assess a student's achievement. The assessments are administered online under the direct supervision of a licensed educator and are designed to identify student achievement on the standards for the respective grade and course. The assessments measure the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

~~[P]~~Q. "USOE" means the Utah State Office of Education.

~~[Q]~~R. "Utah alternate assessment" means an assessment instrument designated by the USOE for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with assessment accommodations or modifications. The Utah alternative assessment measures progress on the Utah core instructional goals and objectives in the student's individual education program (IEP).

~~[R]~~S. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

~~[S]~~T. "Utah Performance Assessment System for Students (U-PASS)" means:

- (1) summative adaptive assessments of students in grades 3 through 12 in basic skills courses;
- (2) an online writing assessment in grades 3 through 11, as part of SAGE;
- (3) college readiness assessments; and
- (4) summative assessment of students in grade 3 to measure reading grade level using grade 3 SAGE English Language Arts.

**R277-404-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the maintenance and administration of U-PASS, Subsection 53A-15-1403(9)(6) which requires the Board to adopt rules to establish a statewide procedure for excusing a student from taking certain assessments, and Sub[S]section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions and to assign responsibilities and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

**R277-404-3. Board Responsibilities.**

A. The Board shall maintain a comprehensive assessment system for all students in grades K-12. This assessment system shall include:

(1) summative adaptive assessments in English language arts for grades 3 through 11; mathematics for grades 3 through 8; secondary math 1, 2, and 3; and science for grades 4 through 8; earth systems, biology, physics and chemistry;

(2) Online Writing Assessment for grades 3 through 11;

(3) pre-post kindergarten assessment for kindergarten students as determined by the LEA;

(4) one benchmark reading assessment approved by the Board for students in grades 1 through 3 and administered to students at the beginning, midpoint and end of year;

(5) grade 3 end of year summative reading assessment using grade 3 SAGE English Language Arts;

(6) Utah's alternate assessment, for eligible students with disabilities;

(7) an English language proficiency test;

(8) National Assessment of Educational Progress (NAEP);

(9) college readiness assessments for grade 11 and optional college and career readiness assessments in grade 8 or 9 and 10, as determined by the LEA; and

(10) reporting by the USOE of U-PASS results to include:

(a) student performance based on information that is disaggregated with respect to race, ethnicity, gender, English proficiency, eligibility for special education services, and free or reduced price school lunch status;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, assessment administration protocols, and training; and

(c) summative adaptive assessment results disseminated by USOE to LEAs, parents, and others, as appropriate, consistent with FERPA.

B. The Board shall provide specific rules, administrative guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.

**R277-404-4. LEA Responsibilities.**

A. LEAs shall develop a comprehensive assessment system plan to include the assessments described in R277-404-3A. This plan shall, at a minimum, include:

(1) professional development for educators to fully implement the assessment system;

(2) training for educators and appropriate paraprofessionals in the requirements of assessment administration ethics; and

(3) training for educators and appropriate paraprofessionals to utilize assessment results effectively to inform instruction; and

(4) adequate oversight of test administration to ensure compliance with Section 53A-1-603(1) as follows:

(a) LEAs or online providers shall test all enrolled students unless students have a written parental excuse under Section 53A-15-1403(9);

(b) Students participating in the Statewide Online Education Program shall be assessed consistent with Section 53A-15-1210; and

(c) Third party vendors or contractors may not administer or supervise U-PASS assessments.

B. LEAs shall make all policies and procedures consistent with the law, Board rules for standardized assessment administration, and the USOE Testing Ethics Policy, approved by the Board August 8, 2014.

C. At least once each school year, LEAs shall provide professional development for all educators, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including educator responsibility for assessment security and proper professional practices.

D. LEA assessment staff shall use the USOE Testing Ethics Policy in providing training for all assessment administrators/proctors.

E. LEAs may not release state assessment data publicly until authorized to do so by the USOE.

**R277-404-5. School Responsibilities.**

A. LEAs/schools shall require educators and assessment administrators/proctors to individually sign the Testing Ethics signature page provided by the USOE acknowledging or assuring that the educator administers assessments consistent with ethics and protocol requirements.

B. All educators and assessment administrators shall conduct assessment preparation, supervise assessment administration, provide assessment results and complete error resolution.

C. All educators and assessment administrators/proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, Board rules, USOE Testing Ethics Policy, and state applications of federal requirements for funding.

D. A student's IEP, EL, or Section 504 team shall determine an individual student's participation in statewide assessments.

**R277-404-6. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.**

A. Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate. Parents may further exercise their inherent rights to exempt their children from a state administered assessment without further consequence by an LEA.

~~[A]B. [AH—]LEAs shall administer [the comprehensive]state administered assessments [system—]to all students unless;~~

(1) the Utah alternate assessment is approved for specific students consistent with federal law and as specified in a student's IEP; or

~~(2) [unless] students are excused by a parent or guardian under Section 53A-15-1403(9) and as provided in this rule.~~

~~C. A parent may exercise the right to exempt their child from a state administered assessment. Upon exercising the right to exempt a child from a state administered assessment under this provision, an LEA may not impose an adverse consequence on a child as a result of the exercise of rights under this provision. In order to exercise the right to exempt a child from a state administered assessment under this provision and insure the protections of this provision, a parent shall annually complete the Board approved parent excuse form a minimum of one (1) day prior to the administration of the state administered assessment and provide the form to the responsible school.~~

~~D. School grading, teacher evaluations, and student progress reports or grades may not be negatively impacted by students excused from taking a state administered assessment.~~

~~E. Any assessment not mandated by the Board as defined in R277-404-1M, the administration of such assessments, and the consequence of taking or failing to take such assessments shall be governed by policies to be adopted by each LEA.~~

~~[B]E. [An LEA educator] LEAs shall provide a student's individual test results and scores to the student's parent[legal] or guardian[consistent with FERPA.] upon request and consistent with the protection of student privacy.~~

~~G. An LEA may not reward a student for taking a state administered assessment as defined in R277-404-1M.~~

**R277-404-7. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.**

A. Educators, test administrators/proctors, administrators, and school employees may not:

- (1) provide students directly or indirectly with specific questions, answers, or the content of any specific item in a standardized assessment prior to assessment administration;
- (2) download, copy, print, take pictures of or make any facsimile of protected assessment material prior to, during or after assessment administration without express permission of the USOE and LEA administrators;
- (3) change, alter or amend any student online or paper response or any other standardized assessment materials at any time in such a way that alters the student's intended response;
- (4) use any prior form of any standardized assessment (including pilot assessment materials) that has not been released by the USOE in assessment preparation without express permission of the USOE and LEA administrators;
- (5) violate any specific assessment administrative procedure specified in the assessment administration manual, or violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in the USOE Testing Ethics Policy;
- (6) fail to administer a state required assessment;
- (7) fail to administer a state required assessment within the designated assessment window;
- (8) submit falsified data;
- (9) allow students to copy, reproduce, or photograph assessment items or components; or
- (10) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.

B. A school employee shall promptly report all assessment violations or irregularities to a building administrator, an LEA superintendent or director, or the USOE.

C. Educators who violate these rules or assessment protocols are subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

D. All assessment materials, questions and student responses for required assessments shall be designated protected, consistent with Section 63G-2-305, until released by the USOE.

E. Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to USOE following testing, as required by the USOE. Individual educators or school employees may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

**R277-404-8. Time Periods for Assessment Administration.**

A. LEA educators or trained employees shall administer assessments required under R277-404-3 consistent with the following schedule:

(1) All summative adaptive assessments, an online writing assessment and a Utah alternative assessment (elementary and secondary, English language arts, math, science) within the USOE annually designated assessment windows.

(2) The English language proficiency assessment:

(a) LEA educators or trained employees shall administer the assessment annually to all English Learner students identified as Level 1 Entering, Level 2 Beginning, Level 3 Developing, Level 4 Expanding, or enrolled for the first time in the LEA at any time during the school year to show student progress; and

(b) LEA educators or trained employees shall submit English language proficiency assessment materials to the USOE-identified scoring provider for scanning and scoring on a schedule defined by the USOE.

(3) LEA educators or trained employees shall administer pre-post kindergarten assessment for kindergarten students as determined by the LEA during assessment windows determined by the LEA.

(4) LEA educators or trained employees shall administer one benchmark reading assessment determined by the Board for grade 1, grade 2, and grade 3 students in the beginning, midpoint, and end of the school year.

(5) LEA educators or trained employees shall administer grade 3 end of year summative reading assessment using grade 3 SAGE English Language Arts.

(6) LEA educators or trained employees shall administer NAEP assessments determined and required annually by the United States Department of Education and administered to students as directed by United States Department of Education.

B. LEA educators or trained employees shall complete all required assessment procedures prior to the end of the USOE-defined assessment window(s).

C. LEAs that have alternative schedules shall submit an annual testing plan to the USOE by September 1 annually. The plan shall:

(1) set dates for summative adaptive assessment administration for courses taught face to face or online;

(2) set dates to assess students at the point in the course where students have had approximately the same amount of instructional time as students on a traditional full year schedule; and

(3) provide a course level assessment schedule to the USOE before instruction begins for the course.

**R277-404-9. Data Exchanges.**

A. The USOE IT Section shall communicate regularly with LEAs regarding required formats for electronic submission of required data.

B. LEAs shall update UTREx data using the processes and according to schedule(s) determined by the USOE.

C. LEAs shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements as determined in R277-484.

D. The USOE shall provide directions to all LEAs detailing the data exchange requirements for each assessment.

E. Each LEA shall verify that all the requirements of the USOE-provided directions have been satisfied.

F. Consistent with Utah law, the USOE shall return assessment results from all required assessments to the school before the end of the school year.

**KEY: assessment, student achievement**

**Date of Enactment or Last Substantive Amendment:**  
[November 10, 2014]2015

**Notice of Continuation:** September 13, 2013

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-603 through 53A-1-611; 53A-1-401(3)

## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-1B**

#### Prohibition of Payment for Certain Abortion Services

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39341

FILED: 05/01/2015

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to update and clarify payment criteria for abortion services.

**SUMMARY OF THE RULE OR CHANGE:** This amendment updates and clarifies payment criteria for abortion services in accordance with state and federal law. It also updates coding for abortion services, removes redundant language from the rule, and makes other technical changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 CFR 441 Subpart E and Section 26-1-5 and Section 26-18-3 and Section 76-7-331

#### **ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies payment criteria for abortion services.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid recipients.

♦ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies payment criteria for abortion services.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this change only clarifies payment criteria for abortion services.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this change only clarifies payment criteria for abortion services.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no impact to business because the rule makes no substantive change as to the criteria for payment for such services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement.**

**R414-1B. [Prohibition of] Payment for [Certain] Limited Abortion Services.**

**R414-1B-1. Introduction and Authority.**

This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in the Hyde Amendment Codification Act, 42 CFR 441, Subpart E, and

Section 76-7-331. [~~#~~]This rule is authorized by Section[s] 26-1-5 and Section 26-18-3.

**R414-1B-2. Definitions.**

(1) "Abortion billing code" means ~~the~~those following codes used to bill for services that are directly or indirectly related to an abortion and are found in the current editions of the:

(a) ~~[59840, 59841, 59850, 59851, 59852, 59855, 59856 and 59857 as shown in the]~~Current Procedural Terminology (CPT) manual of the American Medical Association[, 2003 edition]; and

(b) ~~[69.01, 69.51, 74.91 and 75.0 as shown in the]~~International Classification of Diseases (ICD)[, 9th Edition, Volumes 1 and 2,] Clinical Modification[, Volume 3 Procedures] or Procedural Coding System (PCS).

(2) "Certification" or "Certify" means submitting to the Division of ~~Health~~Medicaid and Health ~~Care~~Financing, Utah Department of Health, a Department-approved document signed by one authorized to act on behalf of a Medicaid provider.

(3) "Public funds" means money of the state, its institutions or its political subdivisions used to pay or otherwise reimburse a person, agency, or facility and money received under Title XIX of the federal Social Security Act. "Public funds" does not include (i) clinical revenue generated from nongovernmental payors; or (ii) gift or donor funds from third party nongovernmental sources.

(4) "Services" means all covered services reimbursable under the Medicaid State Plan and that are limited by federal guidelines set forth by the federal Social Security Act, Title 42 of the Code of Federal Regulations, Section R414-1-5, and Utah Medicaid Provider Manuals.

**R414-1B-3. Certification.**

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004, must certify that public funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life and all requirements of 42 CFR 441, Subpart E have been satisfied; or

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation[; or].

~~[(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable and grave damage to a major bodily function of the pregnant woman provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option. Damage to a major bodily function refers only to injury or impairment of a physical nature and may not be interpreted to mean mental, psychological, or emotional harm, illness, or distress.]~~

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

**R414-1B-4. Standards for Certification.**

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in Section 76-7-331 and to assess whether it receives public funds for any abortion that is not excepted in Subsection 76-7-331(2)(a) or (b)[, or (c)].

(2) A provider is not using public funds to directly or indirectly fund prohibited abortion services if [~~#~~]the provider certifies[ that]:

(a) it uses non-public funds to make up any difference between the reimbursement [~~#~~]the provider receives from all payors for services identified by abortion billing codes, other than those services identified in Subsection R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) [~~#~~]the provider has adopted another method, based on generally accepted accounting principles, [that]which provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

~~**[R414-1B-5. State Officer or Employee Authorization of Funds for Abortion.**~~

~~Any officer or employee of the state who knowingly authorizes the use of funds shall be dismissed from that person's office or position and the person's employment shall be immediately terminated.~~

**[R414-1B-5. Prohibition of Payment for Certain Abortions with Medicaid Funds.**

(1) A Medicaid provider may not use Medicaid funds for the abortion billing codes referenced in Section R414-1B-2 unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life and all requirements of 42 CFR 441, Subpart E have been satisfied;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation.

(2) A Medicaid provider may not construe the certification requirements of Section R414-1B-3 to mean that Medicaid may reimburse for an abortion billing code beyond the exceptions listed in Subsection R414-1B-5(1)(a) and (b).

**KEY: Medicaid, abortion, physicians, hospitals**

**Date of Enactment or Last Substantive Amendment: [November 25, 2009]2015**

**Notice of Continuation: March 18, 2014**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 76-7-331**

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-307**  
Eligibility for Home and Community-  
Based Services Waivers

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39310

FILED: 04/29/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify client eligibility for Home and Community-Based Services (HCBS) waivers.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies medical and financial criteria to become eligible for an HCBS waiver. It also clarifies the time frame used to determine waiver eligibility and makes other technical changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies waiver eligibility for Medicaid recipients.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do fund or provide Medicaid services to Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies waiver eligibility for Medicaid recipients.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this change only clarifies waiver eligibility for Medicaid recipients.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this change only clarifies waiver eligibility for Medicaid recipients.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no impact to business because this change only clarifies waver eligibility for Medicaid recipients, which will have no impact on providers.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-307. Eligibility for Home and Community-Based Services Waivers.****R414-307-3. General Requirements for Home and Community-Based Services Waivers.**

(1) The Department shall apply the provisions of Sec. 2404 of Pub. L. No. 111 148, Patient Protection and Affordable Care Act, which refers to applying the provisions of Section 1924 of the Social Security Act to married individuals who are eligible for home and community-based waiver services.

(2) To qualify for Medicaid coverage of ~~[under a]~~ home and community-based ~~waiver~~ services ~~[waiver]~~, an individual must meet:

(a) the medical eligibility criteria defined in the State ~~[w]~~Waiver ~~[i]~~Implementation ~~[p]~~Plan adopted in Rule R414-61, ~~[applicable]~~which applies to the specific waiver under which the individual is seeking services, as verified by the ~~[referring]~~operating agency case manager;

(b) the financial and non-financial eligibility criteria for one of the Medicaid coverage groups selected ~~[for coverage]~~in the specific waiver implementation plan under which the individual is seeking services; and

(c) ~~[the non-financial Medicaid criteria defined in Rule R414-302; and~~

~~(d) the]other~~ requirements defined in this rule ~~[applicable]~~that apply to all waiver applicants and recipients, ~~[as well as requirements]~~or specific to the waiver for which the individual is seeking eligibility.

(3) ~~[The provisions found in Rule R414-301 apply to applicants and recipients of home and community-based services waivers.~~

~~(4) For individuals claiming a disability, the disability provisions of Rule R414-303 apply.~~

~~(5) ]The provisions found in Rule R414-304 and Rule R414-305 apply to eligibility determinations under a Home and Community-Based Services (HCBS) waiver. [E]except where otherwise stated in this rule[, the income provisions of Rule R414-304 apply to waiver applicants and recipients].~~

~~(6) Except where otherwise stated in this rule, the resource provisions of Rule R414-305 apply to waiver applicants and recipients.~~

~~(7) The benefit provisions of Rule R414-306 apply to waiver applicants and recipients.~~

~~(8) The provisions found in Rule R414-308 that apply to eligibility determinations, redeterminations, change reporting,~~

verification, and improper medical assistance also apply to waiver applicants and recipients.

(9) The Department shall limit the number of individuals covered by an [home and community-based services] HCBS waiver as provided in the adopted waiver implementation plan.

(10) The Department adopts and incorporates by reference, Subsection 1917(f) of the Social Security Act, effective January 1, 2013. An individual is ineligible for nursing facility and other long-term care services when an individual has home equity that exceeds the limit set forth in Subsection 1917(f).

(a) The Department sets that limit at the minimum level allowed under Subsection 1917(f).

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group defined in the [Utah] Medicaid State Plan may receive Medicaid for services other than long-term care services provided under the plan or the [home and community-based] HCBS waiver.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group.

(6) To determine initial eligibility for a Medicaid coverage group under an HCBS waiver, the eligibility agency must receive a completed waiver referral form from the operating agency or designee. Individuals who are not currently eligible for Medicaid must also complete a Medicaid application.

(a) The waiver referral form must verify the date the individual meets the level of care requirements as defined in the State Waiver Implementation Plan.

(b) If the individual's Medicaid eligibility is not approved within 60 days of the level of care date stated on the waiver referral form, the waiver referral form is no longer valid.

(i) The operating agency or designee must submit a new waiver referral form to the eligibility agency establishing a new level of care date.

(ii) Eligibility for Medicaid under an HCBS waiver cannot begin before the new level of care date on the new waiver referral form, subject to the same 60-day period to approve eligibility.

(c) The Medicaid agency may not pay for waiver services before the start date of the individual's approved comprehensive care plan, which may not be earlier than the date the individual meets:

(i) the eligibility criteria for a Medicaid coverage group included in the applicable waiver; and

(ii) the level of care date verified on a valid waiver referral form.

(7) In the event an individual is not approved for Waiver Medicaid services due to Subsection R414-307-3(6), an individual who otherwise meets Medicaid financial and non-financial eligibility criteria for a Non-Waiver Medicaid coverage group may qualify for Medicaid services other than services under an HCBS waiver.

(8) If an individual's Medicaid eligibility ends and the individual reapplies for Waiver Medicaid, the Department shall establish a process of obtaining approval from the operating agency or designee in which the individual continues to meet medical criteria for the Waiver. The operating agency or designee approval may establish a new date in which eligibility to receive coverage of waiver services may begin.

(9) An individual denied Medicaid coverage for an HCBS waiver may request a fair hearing.

(a) The Department conducts hearings on programmatic eligibility for payment of waiver services.

(b) The Department of Workforce Services conducts hearings on financial eligibility issues for a Medicaid coverage group.

#### **R414-307-4. Special Income Group.**

[The following requirements apply to individuals who qualify for a Medicaid home and community-based services waiver under the special income group defined in 42 CFR 435.217 because they do not meet community Medicaid rules but would be eligible for Medicaid if they were living in a medical institution.] The following provisions set forth financial eligibility requirements for the special income group that apply to individuals seeking Medicaid coverage for services under an HCBS waiver as defined in 42 CFR 435.217.

(1) If the individual's spouse meets the definition of a community spouse, the eligibility agency shall apply the income and resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility. If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the eligibility agency shall count one-half of jointly-held assets as available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The eligibility agency may only count income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the eligibility agency may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group. The eligibility agency shall count actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Subsection 1611(b)(1) of the Social Security Act.

(6) The eligibility agency shall apply the transfer of asset provisions of Section 1917 of the Social Security Act ~~[in effect January 1, 2013].~~

(7) The individual's cost-of-care contribution is determined by deducting from the individual's total income, the post-eligibility allowances for the specific waiver for which the individual qualifies.

(8) The eligibility agency shall determine financial eligibility for the special income group [eligibility] for an individual based on the level of care date on a valid waiver referral form as defined in Subsection R414-307-3(2) ~~[starting the month that waiver services begin.]~~ The eligibility agency shall determine eligibility for prior months using the community Medicaid or institutional Medicaid rules ~~[applicable]~~ that apply to the individual's situation.

#### **R414-307-5. Medically Needy Waiver Group.**

The following sets forth financial eligibility requirements for the medically needy coverage group, and applies to individuals seeking Medicaid coverage for HCBS under the New Choices Waiver or the Individuals with Physical Disabilities Waiver. ~~[The following~~

~~requirements apply to individuals applying for or determined eligible for the New Choices Waiver or the Individuals with Physical Disabilities Waiver who meet the eligibility criteria for a medically-needy coverage group defined in 42 CFR 435.301 that the Department has selected for coverage under the implementation plan for the specific waiver.]~~

(1) If an individual's spouse meets the definition of a community spouse, the eligibility agency shall apply the resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3 and Section R414-305-4.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the eligibility agency shall count one-half of jointly-held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The eligibility agency may only count income of the individual determined under the most closely associated cash assistance program to decide eligibility for the medically needy waiver group. The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the eligibility agency may only count income and resources of the child and may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The eligibility agency shall count actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under Subsection 1611(b)(1) of the Social Security Act.

(6) To determine eligibility for an individual without a community spouse. [F]the eligibility agency shall apply the income deductions allowed by the community Medicaid category under which the individual qualifies.

(a) The eligibility agency shall compare countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown.[

~~(a)]~~ The individual's medical expenses, including the cost of long-term care services, must exceed the spenddown amount.

(b)i) If an individual does not have a community spouse, to receive Medicaid eligibility, the individual must meet the applicable contribution to the cost of care in the same manner as a spenddown as defined in Subsection R414-304-11(9). [~~pay the spenddown to the eligibility agency for Medicaid waiver eligibility.~~]

(e)ii) An individual who has a community spouse is subject to the post-eligibility provisions of Section 1924 of the Social Security Act. The eligibility agency determines the individual's cost-of-care contribution by deducting from the individual's total income, the post-eligibility allowances defined in the implementation plan of the specific waiver for which the individual qualifies. The individual must meet the applicable contribution to the cost of care in the same manner as a spenddown as defined in Subsection R414-304-11(9).

(f)7)b) The eligibility agency deducts medical expenses incurred by the individual in accordance with Section R414-304-11.

(g)8)Z) The eligibility agency shall determine an individual's financial eligibility for the medically needy waiver group [~~starting the month that waiver services begin~~]based on the level of care date on a

valid waiver referral form as defined in Subsection R414-307-3(2). The eligibility agency shall determine eligibility for prior months using the community Medicaid or institutional Medicaid rules [~~applicable~~]that apply to the individual's situation.

#### **R414-307-6. New Choices Waiver Eligibility Criteria.**

(1) To qualify for the New Choices Waiver, an individual must be 65 years of age or older, or at least 18 through 64 years of age and disabled as defined in Subsection 1614(a)(3) of the Social Security Act. For the purpose of this waiver, an individual is 18 years of age beginning the first month after the month of the individual's 18th birthday.

(2) A single individual eligible under the special income group, or any married individual with a community spouse, may be required to pay a contribution toward the cost[-]of[-]care to receive [~~home and community-based~~]services under an HCBS waiver. The eligibility agency determines a client's cost-of-care contribution as follows:

(a) The eligibility agency counts all of the client's income unless the income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency deducts the following amounts from the individual's income:

(i) A personal needs allowance equal to 100% of the federal poverty guideline for a household of one;

(ii) For individuals with earned income, up to \$125 of gross-earned income;

(iii) Actual monthly shelter costs not to exceed \$300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses;

(iv) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Subsection 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly;

(v) In the case of a married individual with a community spouse, an allowance for a community spouse and dependent family members who live with the community spouse, in accordance with the provisions of Section 1924 of the Social Security Act;

(vi) When an individual has a dependent family member at home and the provisions of Section 1924 of the Social Security Act do not apply, [~~in the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services,~~]an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual [~~who~~]qualifies for an [~~Medicaid home and community-based~~]HCBS waiver or institutional Medicaid coverage, and contributes income to the dependent family member, the combined income deductions of these individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income. The eligibility agency shall end this deduction when the dependent family member enters a medical institution;

(vii) Medical and remedial care expenses incurred by the individual in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member [~~cannot~~]may not exceed the

amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after these deductions is the individual's cost-of-care contribution.

(3) The individual must pay the cost-of-care contribution [to cost-of-care] to the eligibility agency each month to receive [home and community-based] services under an HCBS waiver.

**KEY: eligibility, waivers, special income group**

**Date of Enactment or Last Substantive Amendment:** [~~January 1, 2014~~]**2015**

**Notice of Continuation:** April 17, 2012

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-401-3** Assessment

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39299  
FILED: 04/27/2015

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to update the annual assessment amounts for nursing care facilities and intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for state fiscal year (SFY) 2016.

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R414-401-3(2), every nursing facility is assessed at the uniform rate of \$18.32 per patient day, which is an increase from the previous \$15.40 per patient day assessment, based upon projected days and a one-time increase in the budget. In Subsection R414-401-3(2), ICFs/ID are assessed at the uniform rate of \$8.46 per patient day, which is a decrease from the previous \$8.48 per patient day assessment, based upon projected days and an assessment target from the 2015 General Session. These updates are based on estimates of patient days for SFY 2016 and the appropriation amounts.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The update to the facility assessment rate is anticipated to be budget neutral as it updates the collection rate based on projected days in SFY 2016 and the appropriation amount. The update to the ICF/ID assessment rate is not budget neutral as it updates the collection rate based on projected days in SFY 2016 and the appropriation amount.

◆ **LOCAL GOVERNMENTS:** Inasmuch as swing beds are variable, it is not possible to determine the cost or savings to local hospital and swing bed facilities.

◆ **SMALL BUSINESSES:** Medicaid nursing facility providers will realize an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities. ICFs/ID will realize an increased cost based upon the increase in the assessment rate. However, with the federal drawdown of funds, they will receive higher reimbursements. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid nursing facility providers will realize an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities. ICFs/ID will realize an increased cost based upon the increase in the assessment rate. However, with the federal drawdown of funds, they will receive higher reimbursements. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs include an increased collection of \$2.92 per non-Medicare patient day from each nursing facility and an increase of \$0.02 per qualifying patient day for the ICF/ID providers. The assessment monies are used to draw down federal matching funds that result in higher reimbursement rates than would be possible without the assessment monies. All Medicaid certified nursing and swing bed facilities have benefited from this process. The amount of overall gain depends on the number of Medicaid patients in the facility. In addition, there would be an increase in cost to non-Medicaid-certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment will affect business due to the increase in costs to non-Medicaid certified facilities. However, ICFs/ID that realize an increase in costs will receive higher Medicaid reimbursements due to the federal drawdown of funds. It is not possible to determine the actual increase for business because the number of patient days are variable.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG

288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-401. Nursing Care Facility Assessment.**

**R414-401-3. Assessment.**

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is \$[~~15.40~~]18.32 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of \$[~~8.48~~]8.46 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

**KEY: Medicaid, nursing facility**

**Date of Enactment or Last Substantive Amendment:** [~~July 1, 2014~~]2015

**Notice of Continuation:** April 7, 2014

**Authorizing, and Implemented or Interpreted Law:** 26-1-30; 26-35a; 26-18-3

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-507**  
Ground Ambulance Service Provider  
Assessments

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 39332

FILED: 05/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to implement the Ambulance Service Provider Assessment Act in accordance with S.B. 172 passed during the 2015 General Session of the Legislature.

**SUMMARY OF THE RULE OR CHANGE:** This new rule outlines ambulance service provider assessments that include audit procedures, notice requirements, payment requirements, and penalties for non-compliance.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3 and Section 26-37a-102

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the general fund because this change only implements an ambulance provider assessment that will provide necessary matching funds.

◆ **LOCAL GOVERNMENTS:** Ground ambulance providers may see a total increase of about \$10,800,000 in revenue.

◆ **SMALL BUSINESSES:** Ground ambulance providers may see a total increase of about \$10,800,000 in revenue.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Ground ambulance providers may see a total increase of about \$10,800,000 in revenue.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs should be minimal for those participating in this program and insignificant compared to the revenue.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will have a positive impact on business in that providers may see an increase in revenue up to \$10,800,000.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-507. Ground Ambulance Service Provider Assessments.**

**R414-507-1. Introduction and Authority.**

This rule defines the scope of the ground ambulance service provider assessment. This rule is authorized under Title 26, Chapter 37a.

**R414-507-2. Definitions.**

The definitions in Section 26-37a-102 apply to this rule.

**R414-507-3. Change in Ground Ambulance Provider Status.**

(1) If a ground ambulance provider's status changes during any given quarter and it no longer falls under the definition of a ground ambulance provider that is subject to the assessment outlined in Section 26-37a-103 or is no longer entitled to Medicaid ground ambulance provider payments, within 30 days of the change in status, the ground ambulance provider must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

P.O. Box 143102

Salt Lake City, UT 84114-3102

Via United Parcel Service, Federal Express, and similar:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

288 North 1460 West

Salt Lake City, UT 84116-3231

(2) For any quarter where a ground ambulance provider is no longer subject to the assessment and notice has been given under Subsection R414-507-3(1):

(a) the Department shall require payment of the assessment from that ground ambulance provider for the full quarter in which the status change occurred; and

(b) the ground ambulance provider is exempt from future assessment in the first quarter following the quarter the status changed.

**R414-507-4. Payments to Ground Ambulance Providers.**

(1) Ground ambulance providers shall be reimbursed an enhanced rate for ground emergency medical transports up to the level approved by the Centers for Medicare and Medicaid Services.

(2) The reimbursement rate shall not exceed the ground ambulance rate published and periodically updated in Section R426-8-2 or the provider's usual and customary charge to private pay

individuals. Providers shall not bill Medicaid more than the provider's usual and customary charge to private pay individuals.

**R414-507-5. Quarterly notice – Collection.**

Quarterly assessments imposed by this chapter shall be paid to DMHF within 15 business days after the original invoice date that appears on the invoice issued by DMHF.

**R414-507-6. Penalties and Interest.**

(1) If DMHF audits a ground ambulance provider's records to determine the correct transports for the assessment, DMHF shall fine the ground ambulance provider five percent of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If a ground ambulance provider fails to fully pay its assessment on or before the due date, DMHF shall fine the provider five percent of its quarterly calculated assessment. The fine is payable within 30 days of invoice. The Department shall suspend all Medicaid payments to a ground ambulance provider until the provider pays the assessment and fine due in full or until the provider and the Department reach a negotiated settlement.

**R414-507-7. Rule Repeal.**

The Department shall repeal this rule in conjunction with the repeal of the Ambulance Service Provider Assessment Act outlined in Section 26-37a-108.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-37a-102**

**Human Resource Management,  
Administration  
R477-1  
Definitions**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39324

FILED: 04/30/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add three new definitions, add language to three existing definitions, and make subsequent number modifications.

SUMMARY OF THE RULE OR CHANGE: The changes add definitions for GOMB, Job Family, and Structure Adjustment; revise definitions of "Administrative Adjustment", "Market Comparability Adjustment", and "Unlawful Discrimination" to provide clarity and meet new statutory mandates; correct "Pay for Performance" definition to read "and" instead of "are"; and update numbers of definitions accordingly.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-12 and Section 67-19-15.7 and Section 67-19-18 and Section 67-19-3 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
- ◆ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.**

**R477-1. Definitions.**

**R477-1-1. Definitions.**

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: ~~[A DHRM approved change of a position from one job to another job or a salary range change for administrative purposes that is not based on a change of duties and responsibilities]~~ An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) **Appointing Authority:** The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) **Break in Service:** A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) **Budgeted FTE:** The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) **Bumping:** A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) **Career Mobility:** A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) **Career Service Employee:** An employee who has successfully completed a probationary period in a career service position.

(21) **Career Service Exempt Employee:** An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) **Career Service Exempt Position:** A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) **Career Service Status:** Status granted to employees who successfully complete a probationary period for career service positions.

(24) **Category of Work:** A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

- (i) unit number;
- (ii) cost centers;
- (iii) geographic locations;
- (iv) agency programs.

(b) positions identified by a set of essential functions, including:

- (i) position analysis data;
- (ii) certificates;
- (iii) licenses;
- (iv) special qualifications;
- (v) degrees that are required or directly related to the position.

(25) **Change of Workload:** A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) **Classification Grievance:** The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) **Classified Service:** Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) **Classification Study:** A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) **Compensatory Time:** Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) **Contractor:** An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) **Critical Incident Drug or Alcohol Test:** A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) **Demotion:** A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) **Detailed Position Record Management Report:** A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) **DHRM:** The Department of Human Resource Management.

(35) **DHRM Approved Recruitment and Selection System:** The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(36) **Disability:** Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(37) **Disciplinary Action:** Action taken by management under Rule R477-11.

(38) **Dismissal:** A separation from state employment for cause under Section R477-11-2.

(39) **Dual State Employment:** Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(40) **Drug-Free Workplace Act:** A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(41) **Employee Personnel Files:** For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(42) **Employment Eligibility Verification:** A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(43) **"Escalator" Principle:** Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(44) **Excess Hours:** A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(45) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(46) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(47) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(48) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) GOMB: Governor's Office of Management and Budget.

(51[0]) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(52[+]) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(53[2]) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(54[3]) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

- (a) safety sensitive functions:
  - (i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);
  - (ii) directly related to law enforcement;
  - (iii) involving direct access or having control over direct access to controlled substances;
  - (iv) directly impacting the safety or welfare of the general public;
  - (v) requiring an employee to carry or have access to firearms; or
- (b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:
  - (i) financial assets, liabilities, and account information;
  - (ii) social security numbers;
  - (iii) wage information;
  - (iv) medical history;
  - (v) public assistance benefits; or
  - (vi) driver license

(55[4]) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(56[5]) HRE: Human Resource Enterprise; the state human resource management information system.

(57[6]) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(58[7]) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(59[8]) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(60[59]) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(61[0]) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(62[+]) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(63) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(64[2]) Job Requirements: Skill requirements defined at the job level.

(65[3]) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(66[4]) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(67[5]) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(68[6]) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(69[7]) Market Comparability Adjustment: ~~[Legislatively approved change to a salary range for a job based on a compensation survey conducted by DHRM.]~~ An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(70[68]) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(71[69]) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(72[0]) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(73[+]) Nonfeasance: Failure to perform either an official duty or legal requirement.

(74[2]) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(75[3]) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals ~~are~~ and targets are met.

(76[4]) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(77[5]) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(78[6]) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(79[7]) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(80[78]) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(81[79]) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(82[8]) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(83[4]) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(84[2]) Position Identification Number: A unique number assigned to a position for FTE management.

(85[3]) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(86[4]) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(87[5]) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(88[6]) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(89[7]) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(90[88]) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(91[89]) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(92[8]) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(93[+]) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(94[2]) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(95[3]) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(96[4]) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(97[5]) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(98[6]) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(99[7]) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(100[98]) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes

specific information for a particular position, job seekers' applications, and a hiring list.

(101[99]) Salary Range: Established minimum and maximum [wages]rates assigned to a job.

(102[0]) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(103[+]) Separation: An employee's voluntary or involuntary departure from state employment.

(104[2]) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(105) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The salary range adjustment cannot have a budgetary impact on an agency unless additional approval is received from the Governor's Office.

(106[3]) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(107[4]) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(108[5]) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(109[6]) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(110[07]) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(111[08]) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(112[09]) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(113[0]) Wage: The fixed hourly rate paid to an employee.

(114[+]) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

**KEY: personnel management, rules and procedures, definitions**

**Date of Enactment or Last Substantive Amendment: ~~July 1, 2014~~ 2015**

**Notice of Continuation: February 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18**

## Human Resource Management, Administration **R477-2** Administration

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39315

FILED: 04/30/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** S.B. 296 of the 2015 General Session updated the antidiscrimination statutes. The purpose of this amendment is to reflect the new statutory mandates and provide consistency in terms and phrases.

**SUMMARY OF THE RULE OR CHANGE:** The changes: add protected classes consistent with S.B. 296 from the 2015 General Session, Anti-Discrimination and Religious Freedom Amendments; and corrects agency name for GOMB.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A-5-102 and Section 34A-5-104 and Section 34A-5-106 and Section 34A-5-107 and Section 67-19-15 and Section 67-19-18 and Section 67-19-6

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Debbie Cragun, Executive Director

#### **R477. Human Resource Management, Administration.**

##### **R477-2. Administration.**

##### **R477-2-1. Rules Applicability.**

These rules apply to the executive branch of Utah State Government and its career and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

- (1) members of the Legislature and legislative employees;
- (2) members of the judiciary and judicial employees;
- (3) officers, faculty, and other employees of state institutions of higher education;

(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Office of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch and their employees;

(7) employees of independent entities, quasi-governmental agencies and special service districts;

(8) employees in any position that is determined by statute to be exempt from these rules.

##### **R477-2-2. Compliance Responsibility.**

Agencies shall comply with these rules.

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:

(a) applying the rule prevents the achievement of legitimate government objectives; or

(b) applying the rule infringes on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

(3) In cases of noncompliance with Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties under Subsection 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

##### **R477-2-3. Fair Employment Practice and Discrimination.**

All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, ~~gender~~sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) file a charge with the Utah Labor Commission Anti-Discrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

##### **R477-2-4. Control of Personal Service Expenditures.**

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of ~~Planning~~Management and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

**R477-2-5. Records.**

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files.

(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.

(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical and I-9 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) If disciplinary action under R477-11-1(4) has been sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

**R477-2-6. Release of Information in a Reference Inquiry.**

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

**R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act - 1986).**

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

**R477-2-8. Disclosure by Public Officers Supervising a Relative.**

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed under Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

**R477-2-9. Employee Liability.**

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

**R477-2-10. Alternative Dispute Resolution.**

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

**KEY: administrative responsibility, confidentiality of information, fair employment practices, public information**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2014]~~**2015**

**Notice of Continuation:** February 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 52-3-1; 63G-2; 63G-5-201; 63G-7; 67-19-6; 67-19-15; 67-19-18

**Human Resource Management,  
Administration  
R477-3-1  
Job Classification Applicability**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 39316  
FILED: 04/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add positions to the list of employees exempt from classified service, and clarify existing rules.

**SUMMARY OF THE RULE OR CHANGE:** The changes add positions in employee schedules AU and AQ to list of exempt positions; and clarify rules subject to schedule codes AD and AR.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-12 and Section 67-19-6

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to

write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
◆ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.**

**R477-3. Classification.**

**R477-3-1. Job Classification Applicability.**

(1) The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions except for ~~those exempted in 67-19-12 (2)~~ the following positions, which include:

- (a) employees already exempted from DHRM rules in R477-2-1;
- (b) all employees in:
  - (i) the office and residence of the governor;
  - (ii) the Utah Science Technology and Research Initiative (USTAR);
  - (iii) the Public Lands Policy Coordinating Council;
  - (iv) the Office of the Utah State Auditor; and
  - (v) the Utah State Treasurer's Office;
- (c) employees of the State Board of Education, who are licensed by the State Board of Education;
- (d) employees in any position that is determined by statute to be exempt from classified service;
- (e) employees whose agency has authority to make rules regarding performance, compensation, and bonuses for its employees;
- (f) other persons appointed by the governor under statute;

(g) temporary employees [~~in Schedule TL or IN~~] who work part time indefinite or work on a time limited basis; [~~and~~]

(h) patients and inmates designated as schedule AU;

(i) members of state and local boards and councils and other employees designated as schedule AQ; and

(~~h~~)(j) educational interpreters and educators as defined by Section 53A-25b-102 who are employed by the Utah Schools for the Deaf and the Blind.

(2) The Executive Director, DHRM, may designate specific job titles, job and position identification numbers, schedule codes, and other administrative information for all employees exempted in R477-2-1 and R477-3-1 for identification and reporting purposes only. These employees are not to be considered classified employees.

(3) Employees in schedule codes AD and AR are not considered classified employees but are subject to the Job Description and Assignment of Duties sections of this rule.

**KEY:** administrative procedures, grievances, job descriptions, position classifications

**Date of Enactment or Last Substantive Amendment:** [~~July 1, 2014~~]**2015**

**Notice of Continuation:** February 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 67-19-6; 67-19-12

## Human Resource Management, Administration **R477-4** Filling Positions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39317

FILED: 04/30/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to provide consistency in terms and phrases and to clarify existing rules.

**SUMMARY OF THE RULE OR CHANGE:** The changes modify reporting requirements for IN and TL employees; clarify and organize assimilation process; and correct citations.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-6 and Section 67-20-8

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT

ADMINISTRATION

ROOM 2120 STATE OFFICE BLDG

450 N MAIN ST

SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at gghargis@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

♦ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON:** 07/01/2015

**AUTHORIZED BY:** Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.**

**R477-4. Filling Positions.**

**R477-4-1. Authorized Recruitment System.**

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

**R477-4-2. Career Service Exempt Positions.**

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

- (a) be Schedule IN, in which the employee:
  - (i) is hired to work part time indefinitely; ~~and~~
  - (ii) shall work less than 30 hours per week; ~~and~~
  - ~~(iii) shall be notified annually of the temporary status of the position; or~~

~~position; or~~  
]

- (b) be Schedule TL, in which the employee:
  - (i) is hired to work on a time limited basis; ~~and~~
  - ~~(ii) shall be notified annually of the temporary status of the position;~~

(c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.

(d) if the required work hours of the position meet or exceed 30 hours per week for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Only Schedule A, IN or TL appointments made from a hiring list under Subsection R477-4-8 may be considered for conversion to career service.

(6) Disclosure statements shall be obtained and reference and background checks shall be conducted for all Schedule AB, AC, AD and AR new hire appointees.

**R477-4-3. Career Service Positions.**

(1) Selection of a career service employee shall be governed by the following:

- (a) DHRM business practices;
- (b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;
- (c) equal employment opportunity principles;
- (d) Section 52-3-1, employment of relatives;
- (e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

**R477-4-4. Recruitment and Selection for Career Service Positions.**

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

- (a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

**R477-4-5. Transfer and Reassignment.**

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

~~(c) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.~~

(d) A transfer may include a decrease in actual wage.

(e) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(f) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and is not in longevity. Employees shall be eligible for a longevity increase when they have been above the salary range maximum for 12 months and all other longevity criteria are met.

(g) An employee in longevity, who is transferred or reassigned and remains in longevity, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

(2) A reassignment or transfer may include assignment to:

- (a) a different job or position with an equal or lesser salary range maximum;
- (b) a different work location; or
- (c) a different organizational unit.

**R477-4-6. Rehire.**

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(b) An employee rehired into a benefited position within one year of separation shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(d) A rehired employee may be offered any salary within the salary range for the position.

**R477-4-7. Examinations.**

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall include the following:

- (a) a detailed position record (DPR) based upon a current job or position analysis;
- (b) an initial, impartial screening of the individual's qualifications;
- (c) impartial evaluation and results; and
- (d) reasonable accommodation for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

**R477-4-8. Hiring Lists.**

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using a DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

**R477-4-9. Job Sharing.**

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

**R477-4-10. Internships.**

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

**R477-4-11. Volunteer Experience Credit.**

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

**R477-4-12. Reorganization.**

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

**R477-4-13. Career Mobility Programs.**

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-4[6](10).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

#### **R477-4-14. Assimilation.**

(1) An employee assimilated by the state from another government career service system to fill a Schedule B position shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process [used in the state career service] prescribed in DHRM Rules.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

(b) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

#### **R477-4-15. Policy Exceptions.**

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

**KEY: employment, fair employment practices, hiring practices**

**Date of Enactment or Last Substantive Amendment: ~~July 1, 2014~~ 2015**

**Notice of Continuation: February 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8**

## Human Resource Management, Administration **R477-6** Compensation

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39318

FILED: 04/30/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 239 on the 2015 General Session updated statutes relating to market research and compensation. The proposed amendments to affected rules reflect the new statutory mandates, conform rule with the Affordable Care Act, provide consistency in terms and phrases, and clarify existing rules.

**SUMMARY OF THE RULE OR CHANGE:** The changes remove language in Section R477-6-1 to avoid redundancies; add "Agency approved" to clarify the type of wage increases and decreases affected; add a new Subsection R477-6-1(d) to address the issue of longevity add provisions for market comparability and structure adjustments to pay plans for classified employees; create new sections (R477-6-3 and R477-6-4) addressing pay plans for unclassified employees, changes wording of administrative adjustment subsection to remove redundancies; creates a Geographic Job Market Bonus incentive award type; remove Subsections R477-6-8(b) and (i) and create Subsection R477-6-8(8) as in accordance with the Affordable Care Act; and make minor language and citation changes to clarify rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-12 and Section 67-19-15.1 and Section 67-19-15.7 and Section 67-19-3 and Section 67-19-6

#### **ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency

passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Debbie Cragun, Executive Director

#### **R477. Human Resource Management, Administration.**

##### **R477-6. Compensation.**

##### **R477-6-1. Pay Plans.**

(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job ~~in classified service. Jobs exempt from classified service are identified in Subsection R477-3-1(1).~~

(a) Each job description shall include a salary range.

(b) Agency approved [W] wage increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

~~[(iii) This subsection does not apply to legislatively approved salary adjustments and longevity.~~

~~]~~ [(c) Agency approved [W] wage decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

~~[(iii) This subsection does not apply to legislatively approved salary adjustments.~~

~~]~~ (d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary

range maximum unless the criteria for longevity increases has been met.

##### **R477-6-2. Allocation to the Pay Plans for Classified Employees.**

(1) Each job in classified service shall be ~~assigned to a salary range.~~

(a) assigned to a salary range and job family.

(b) surveyed in the market in accordance with the benchmark job(s).

(c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary ~~[ranges] data~~ in the market; ~~or]~~

(b) a structure adjustment that has no budgetary impact on all affected agencies; or

[(b)](c) a [comparison of the state's benchmark] market comparability adjustment to a job's salary range[s] [to] based upon salary [ranges] data and other relevant information for similar jobs in the market through an annual compensation benchmark survey [conducted by DHRM] or other sources.

(i) Market comparability ~~[salary range]~~ adjustment recommendations shall be included in the annual compensation plan ~~[and shall be] and are~~ submitted to the Governor no later than October 31 of each year.

(ii) Funding for m[M]arket comparability [salary range] adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) ~~[Each job exempted from classified service shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.] Salary ranges cannot be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.~~

##### **R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.**

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments. GOMB approval is required for adjustments to the salary range of the Deputy Director or equivalent.

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments shall not be approved for cross agency jobs unless the adjustment has no budgetary impact on all affected agencies.

**R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU and AQ.**

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range, with a beginning and ending salary of any amount determined appropriate by the affected agency.

**[R477-6-3]R477-6-5. Appointments.**

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

**[R477-6-4]R477-6-6. Salary.**

(1) Promotions.

(a) An employee who is in designated schedules B, AD, AR, AT, or AW and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-[4]6(3), governing longevity.

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-[4]6(3).

(b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity.

(a) An employee shall receive an initial longevity increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at or above the maximum of the current salary range for at least one year and received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee in longevity shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(d) An employee in longevity who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(e) An employee in longevity who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(f) An employee in longevity who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains in longevity, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous twelve months.

(g) An employee who is not in longevity and is reclassified, transferred, reassigned, or receiving an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and is not in longevity. Employees shall be eligible for a longevity increase when they have been above the salary range maximum for 12 months and all other longevity criteria are met.

(h) An employee in Schedules AB, IN, or TL is not eligible for the longevity program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes[;] may not receive[an adjustment in the current actual wage.

~~(b) Implementation of new job descriptions as an administrative adjustment may not result in an [increase]adjustment in the current actual wage unless the employee is below the minimum of the new salary range.~~

~~(c)~~(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.

An employee's current actual wage may not be decreased except when provided in federal or state law. Wage decreases shall be at least 1/2% or down to the salary range minimum.

(6) Transfer.

Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum. Wage decreases shall be at least 1/2% or down to the salary range minimum.

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a

job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for administrative salary increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum or in longevity may not be granted administrative salary increases.

(9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage may not be less than the salary range minimum.

(b) Wage decreases shall be at least 1/2% or down to the salary range minimum.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a wage increase or decrease of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

**[R477-6-5]R477-6-7. Incentive Awards.**

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary,

not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

~~(A)~~(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based ~~incentive awards~~ bonuses shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the ~~[incentive award]~~ bonus based on:

- (A) budget;
- (B) recruitment difficulties;
- (C) a mission critical need to attract or retain unique or hard to find skills in the market; or
- (D) other market based reasons.

(b) Retention Bonus  
An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

**[R477-6-6]R477-6-8. Employee Benefits.**

(1) An employee shall be eligible for benefits when:

- (a) in a position designated by the agency as eligible for benefits; and
- (b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

~~[(b) An employee with previous medical coverage shall provide a certificate of credible coverage to the state's health care provider which states dates of eligibility for the employee, and the employee's dependents in order to have a preexisting waiting period reduced or waived.~~

~~[(i) An eligible employee or dependent under the age of 19 may not be required to meet any preexisting waiting period.]~~

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

**[R477-6-7]R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.**

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at the current salary range maximum or in longevity shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-[5]7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-[8]10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position

shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if ~~he~~the employee had previously earned career service. However, the employee may not be eligible for ~~the~~a severance package, increased annual leave accrual, or ~~the~~exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

**~~R477-6-8~~R477-6-10. State Paid Life Insurance.**

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC or AS may be provided these benefits at the discretion of the appointing authority.

**~~R477-6-9~~R477-6-11. Severance Benefit.**

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of severance a benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

**~~R477-6-10~~R477-6-12. Human Resource Transactions.**

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

**KEY: wages, employee benefit plans, insurance, personnel management**

**Date of Enactment or Last Substantive Amendment: ~~July 1, 2014~~2015**

**Notice of Continuation: February 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)**

**Human Resource Management,  
Administration  
R477-7  
Leave**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 39319  
FILED: 04/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify the rule regarding leave.

**SUMMARY OF THE RULE OR CHANGE:** The changes provide clarifying language to conditions of leave; set parameters for sick leave hours for retired employees that reemploy with the state; move Subsections R477-7-8(3) and R477-7-8(4) around to provide clarity to the rule; remove four month language from Leave without Pay section to eliminate redundancies with Conditions of Leave section; and correct citations.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-12.9 and Section 67-19-14 and Section 67-19-6

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to

write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Debbie Cragun, Executive Director

#### **R477. Human Resource Management, Administration.**

##### **R477-7. Leave.**

##### **R477-7-1. Conditions of Leave.**

- (1) An employee shall be eligible for ~~[benefits]~~leave when:
  - (a) in a position designated by the agency as eligible for benefits; and
  - (b) in a position which normally requires working ~~[at least]~~a minimum of 40 hours per pay period.
- (2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.
- (3) An employee shall use leave in no less than quarter hour increments.
- (4) An employee may not use annual, sick, ~~[converted sick]~~, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.
- (5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.
- (6) An employee may not use any type of leave except jury leave to accrue excess hours.

(7) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:

- (i) leave without pay;
- (ii) administrative leave specifically approved by management to be used after the last day worked;
- (iii) leave granted under the FMLA; or
- (iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

(9) After four months cumulative leave from the first day of absence due to the inability to perform the regular position in a 24 month period, the employee shall be separated from employment regardless of paid leave status unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(10) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

##### **R477-7-2. Holiday Leave.**

(1) The following dates are paid holidays for eligible employees:

- (a) New Years Day -- January 1
- (b) Dr. Martin Luther King Jr. Day -- third Monday of January
- (c) Washington and Lincoln Day -- third Monday of February
- (d) Memorial Day -- last Monday of May
- (e) Independence Day -- July 4
- (f) Pioneer Day -- July 24
- (g) Labor Day -- first Monday of September
- (h) Columbus Day -- second Monday of October
- (i) Veterans' Day -- November 11
- (j) Thanksgiving Day -- fourth Thursday of November
- (k) Christmas Day -- December 25

(l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

**R477-7-3. Annual Leave.**

(1) An eligible employee shall accrue leave based on the following years of state service:

- (a) less than 5 years -- four hours per pay period;
- (b) at least 5 and less than 10 years -- five hours per pay period;
- (c) at least 10 and less than 20 years -- six hours per pay period;
- (d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee under the following conditions:

- (a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.
- (b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.
- (c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year, subject to Subsection R477-7-1(5).

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

(7) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

**R477-7-4. Sick Leave.**

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children, or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

**R477-7-5. Converted Sick Leave.**

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) An employee may use converted sick leave as annual leave or as regular sick leave.

(3) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(4) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(5) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

- (i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I; or
- (ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(7) A retired employee who reemploys in a benefited position with the state after being separated for a continuous year after the retirement date, and who chooses to suspend pension, shall have a new benefit calculated on any new Program II converted sick leave hours accrued for the new period of employment, upon subsequent

~~[(7) A retired employee who reemploys in a benefited position with the state after being separated for a continuous year after the retirement date, and who chooses to suspend pension, shall have a new benefit calculated on any new Program II converted sick leave hours accrued for the new period of employment, upon subsequent~~

~~retirement. The employee shall be reemployed for at least two years before receiving this benefit.~~

]

**R477-7-6. Sick Leave Retirement Benefit.**

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006 shall be Program II sick leave hours.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or  
 (ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who ~~[reemploys]is reemployed~~ in a benefited position with the state ~~[after being separated for a continuous year after the retirement date, and who chooses to suspend pension,]~~ shall have a ~~[new-]benefit~~ calculated on any ~~[new-]Program II sick leave hours [accrued for the new period of employment, upon subsequent retirement. The employee shall be reemployed for at least two years before receiving this benefit.]if:~~

~~(i) The employee chooses to suspend pension;~~  
~~(ii) The employee was separated for one year or more;~~  
~~(iii) The employee was reemployed before January 2, 2014;~~  
~~and~~

~~(iv) The employee must work for two years or more to receive this benefit.~~

~~(7) A retired employee who is reemployed in a benefited position with the state after January 4, 2014 shall accrue Program III sick leave, which shall have no benefit upon subsequent retirement.~~

**R477-7-7. Administrative Leave.**

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

- (i) governor approved holiday leave;
- (ii) during management decisions that benefit the organization;
- (iii) when no work is available due to unavoidable conditions or influences; or
- (iv) other reasons consistent with agency policy.
- (b) protected;
  - (i) suspension with pay pending hearing results;
  - (ii) personal decision making prior to discipline;
  - (iii) removal from adverse or hostile work environment situations;
  - (iv) fitness for duty or employee assistance; or
  - (v) other reasons consistent with agency policy.
- (c) reward in lieu of cash;
  - (i) the agency head or designee may grant paid administrative leave up to one day per occurrence;
  - (ii) administrative leave in excess of one day may be granted with written approval by the agency head.
  - (iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.
  - (iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.
  - (d) employee education assistance.
- (2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.
  - (a) Management may specify the hours when the employee may be absent.
  - (3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.
  - (4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.
  - (5) Administrative leave taken shall be documented in the employee's leave record.

**R477-7-8. Witness and Jury Leave.**

- (1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:
  - (a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or
  - (b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or
  - (c) serve on a jury.
- (2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.
- ~~(3) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.~~
- ~~(4)~~(3) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for

deposit with the State Treasurer.~~[The fees shall be deposited as a refund of expenditure in the unit where the salary is recorded.]~~

(4) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

**R477-7-9. Bereavement Leave.**

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

- (a) spouse;
- (b) parents;
- (c) siblings;
- (d) children;
- (e) all levels of grandparents; or
- (f) all levels of grandchildren.

**R477-7-10. Military Leave.**

An employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Section 39-3-2.

(1) An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

- (i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or
- (ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

- (i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or
- (ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the

Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

#### **R477-7-11. Disaster Relief Volunteer Leave.**

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12 month period to participate in disaster relief services for a disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the disaster relief organization;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide; and

(d) the nature and location of the disaster where the employee's services will be provided.

#### **R477-7-12. Organ Donor Leave.**

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

#### **R477-7-13. Leave of Absence Without Pay.**

~~Excluding leave allowed under state or federal law, an employee may receive up to four months cumulative leave without pay in a 24 month period.~~

(2)(1) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(3)(2) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(4)(3) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the

employee from returning to the last held regular position unless prohibited by state or federal law.

~~After four months cumulative leave without pay in a 24 month period, the employee shall be separated from employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.~~

(4) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(5) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(6) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

#### **R477-7-14. Furlough.**

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

#### **R477-7-15. Family and Medical Leave.**

(1) An eligible employee is allowed up to 12 work weeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 work weeks of family and medical leave during a 12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

(a) be employed by the state for at least one year;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.

(b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

(i) Program III sick leave;

(ii)(A) Compensatory time;

(B) Excess leave; or

(C) Annual leave;

(iii)(A) Converted sick leave;

(B) Program II sick leave; or

(C) Program I sick leave.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

#### **R477-7-16. Workers Compensation Leave.**

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by a licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iii) employee has been absent from work for four months in a 24 month period;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, and the employee elects to continue health insurance coverage, the employee shall be responsible to pay health insurance pursuant to R477-7-17(1)(b)(i).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position after four months cumulative leave in a 24 month period, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll

clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

**R477-7-17. Long Term Disability Leave.**

(1) An employee who has applied for the Long Term Disability Program (LTD) may be granted up to four months cumulative leave in a 24 month period as the result of health conditions, unless documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last-held regular position.

(a) After four months of cumulative leave in a 24 month period, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(2) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked or the last day of FMLA leave.

(a) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(3) Upon approval of the LTD claim:

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(4) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(5) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work, the agency shall place the employee in the previously held position or similar position in a

comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(6) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

(7) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

**R477-7-18. Disabled Law Enforcement Officer Amendments.**

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

**R477-7-19. Leave Bank.**

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Access to a leave bank is not an employee right and shall be authorized at management discretion.

(b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.

(c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

**R477-7-20. Policy Exceptions.**

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

**KEY: holidays, leave benefits, vacations**

**Date of Enactment or Last Substantive Amendment:** ~~July 1, 2014~~ 2015

**Notice of Continuation:** February 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 34-43-103; 39-3-1; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14

**Human Resource Management,  
Administration  
R477-8-3  
Lunch, Break and Exercise Release  
Periods**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39320

FILED: 04/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 242 of the 2015 General Session updated the statutes relating to employees who are breastfeeding. The proposed amendments to affected rules reflect the new statutory mandates.

**SUMMARY OF THE RULE OR CHANGE:** The changes create Subsections R477-8-3(5)(a) and (b) to require employer to provide a private location and temporary storage for expressed breast milk; and revise language to make rule clearer.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34-49-101 and Section 34-49-102 and Section 34-49-202 and Section 34-49-204 and Section 67-19-6

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

HUMAN RESOURCE MANAGEMENT

ADMINISTRATION

ROOM 2120 STATE OFFICE BLDG

450 N MAIN ST

SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at gghargis@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

◆ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015**

**AUTHORIZED BY:** Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.**

**R477-8. Working Conditions.**

**R477-8-3. Lunch, Break and Exercise Release Periods.**

(1) Each full time work day may include a minimum of 30 minutes noncompensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) ~~[Reasonable]~~ As requested and after consultation with an employee, reasonable, daily [noncompensated] break periods, as requested by the employee, shall be granted for the first year following the birth of a child ~~[so that the]~~ to allow an employee to [may] express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.

(b) Appropriate temporary storage shall be provided for expressed milk.

**KEY: breaks, telecommuting, overtime, dual employment**

**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2014]~~ 2015**

**Notice of Continuation: February 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103**

**Human Resource Management,  
Administration  
R477-15  
Workplace Harassment Prevention**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39322

FILED: 04/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to provide consistency in terms and phrases and to clarify existing rules.

**SUMMARY OF THE RULE OR CHANGE:** The changes add protected classes consistent with S.B. 298 from the 2015

General Session, Anti-discrimination and Religious Freedom Amendments; change wording to remove redundancies; and clarify the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A -5-106 and Section 34A-5-102 and Section 34A-5-104 and Section 34A-5-107 and Section 67-19-18 and Section 67-19-6

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

♦ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.**

**R477-15. Workplace Harassment Prevention.**

**R477-15-1. Policy.**

It is the policy of the State of Utah~~[s policy]~~ to provide a work environment free from discrimination and harassment based on race, religion, national origin, color, ~~[gender]~~sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity or class under state ~~[and]~~ or federal law.

(1) Workplace harassment includes the following subtypes:

(a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) An employee may be subject to discipline for workplace harassment, even if:

(a) the harassment is not sufficiently severe to warrant a finding of unlawful harassment, or

(b) the harassment occurs outside of scheduled work time or work location.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

**R477-15-2. Retaliation.**

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing, or is otherwise engaged in protected activity.

**R477-15-3. Complaint Procedure.**

Management shall permit ~~[individuals affected by]~~employees who allege workplace harassment, retaliation, or both to file complaints and engage in ~~[an administrative]~~a review process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) ~~[Individuals]~~Employees who feel they are being subjected to workplace harassment, retaliation, or both should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify a witness(es), if applicable.

(2) An employee may file an oral or written complaint of workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any ~~[individual]~~employee, witness, volunteer or other ~~[employee]~~individual.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

**R477-15-4. Investigative Procedure.**

(1) ~~[Formal]~~When warranted investigations shall be conducted ~~[by qualified individuals]~~ based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate administrative action, ~~[under Rule R477-11.]~~

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the ~~[findings shall be documented and the appropriate parties notified]~~appropriate parties shall be notified.

**R477-15-5. Workplace Harassment Records.**

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

**R477-15-6. Training.**

(1) ~~[Agencies]~~DHRM shall ~~[ensure]~~provide employees ~~[receive]~~ training, including additional training for supervisors, on the prevention of workplace harassment.

(a) The curriculum shall be approved by DHRM and the Division of Risk Management.

- (b) ~~[After initial training all a]~~ Agencies shall ensure updated or refresher training is provided to employees every two years.
- (c) Training shall be developed and provided by qualified individuals.
- (d) Training records shall be maintained, including who provided the training, who attended the training and when they attended it.

**KEY: administrative procedures, hostile work environment**  
**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2014]~~**2015**  
**Notice of Continuation:** February 3, 2012  
**Authorizing, and Implemented or Interpreted Law:** 67-19-6; 67-19-18; 63G-2-305; ~~[Governor's Executive Order on]~~**E.O. No. 12 "Prohibiting Unlawful Harassment"**~~;~~ (December 13, 2006)~~[Number 2006/0012]~~

Human Resource Management,  
 Administration  
**R477-16**  
 Abusive Conduct Prevention

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 39323  
 FILED: 04/30/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 216 of the 2015 General Session modifies the Personnel Management Act to address workplace abusive conduct. The proposed new rule reflects the new statutory mandates.

SUMMARY OF THE RULE OR CHANGE: This creates Rule R477-16 for Abusive Conduct Prevention, which includes the basic policy, complaint, and investigative procedures and mandatory training as outlined in H.B. 216 (2015).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-44 and Section 67-19-6

- ANTICIPATED COST OR SAVINGS TO:
- ◆ THE STATE BUDGET: Fiscal note to H.B. 216 says: "Enactment of this bill may cost the Department of Human Resource Management Internal Service Fund \$48,000 one-time from dedicated credits in FY 2015 to develop statewide training." The fiscal note also forecasts \$7,500 annually for ongoing costs.
  - ◆ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
  - ◆ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.

- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department of Human Resource Management has assigned a full-time HR Specialist to ensure compliance of the bill. The annual cost of this full-time position will be approximately \$48,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ◆ 06/02/2015 10:00 AM, Senate Building, 420 N State Street, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Debbie Cragun, Executive Director

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**R477. Human Resource Management, Administration.**  
**R477-16. Abusive Conduct Prevention.**  
**R477-16-1. Policy.**  
It is the policy of the State of Utah to provide a work environment free from abusive conduct.

(1) Abusive conduct includes physical, verbal or nonverbal conduct, such as derogatory remarks, insults, or epithets made by an employee that a reasonable person would determine:

(a) was intended to cause intimidation, humiliation, or unwarranted distress;

(b) exploits a known physical or psychological disability; or

(c) results in substantial physical or psychological harm.

(2) A single act does not constitute abusive conduct unless it is especially severe and egregious.

(3) Abusive conduct does not include:

(a) appropriate disciplinary or administrative actions;

(b) coaching or work-related feedback;

(c) reasonable work assignments or job reassignments; or

(d) reasonable differences in styles of management, communication, expression or opinion.

(4) An employee may be subject to discipline under this rule even if the conduct occurs outside of scheduled work time or work location.

(5) Once a complaint of abusive conduct has been filed, the accused may not communicate with the complainant regarding allegations in the complaint.

#### **R477-16-2. Complaint Procedure.**

Management shall permit employees who allege abusive conduct to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation.

(1) Employees who feel they are being subjected to abusive conduct should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness(es), if applicable

(2) An employee shall file a written complaint of abusive conduct with their immediate supervisor, any other supervisor in their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with DHRM and document the action.

#### **R477-16-3. Investigative Procedure.**

(1) When warranted, investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If an investigation finds the allegations of abusive conduct to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in abusive conduct allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

(3) Participants in any abusive conduct investigation shall treat all information pertaining to the case as confidential.

#### **R477-16-4. Abusive Conduct Training.**

(1) DHRM shall provide employees and supervisors training on the prevention of abusive conduct.

(a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, and options available under rule.

(b) Updated or refresher training will be provided to employees every two years.

(c) Training records shall be maintained, including who provided the training, who attended the training and when they attended it.

**KEY: abusive conduct, administrative procedures, hostile work environment**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-44**

## Human Services, Administration **R495-878** Americans With Disabilities Act Grievance Procedures

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 39325

FILED: 04/30/2015

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Department of Human Services is updating its grievance procedures to better inform the public and increase accountability.

SUMMARY OF THE RULE OR CHANGE: This rule provides a centralized grievance procedure for constituent complaints of discrimination. No significant substantive provisions in the repealed rule were eliminated from the enacted rule. The repealed rule was reorganized and internal procedures were adjusted in the enacted rule. The enacted rule adds alleged violations of Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, and the Age Discrimination Act, to the list of constituent complaints that may be submitted to the Department for investigation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 28 CFR 35.107 and 29 USC 794 et seq. and 42 USC 12131 et seq. and 42 USC 2000d et seq. and 42 USC 6101 et seq. and Section 62A-1-111 and Subsection 63G-3-201(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule will change procedure but will not require any additional staff or resources and will not have any fiscal impact on the state budget.

- ◆ LOCAL GOVERNMENTS: This rule will change procedure but will not require any additional staff or resources and will not have any fiscal impact on local government.
- ◆ SMALL BUSINESSES: This rule will change procedure but will not require any additional staff or resources and will not have any fiscal impact on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule will change procedure but will not require any additional staff or resources and will not have any fiscal impact on anyone in the grievance procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will change procedure but will not require any additional staff or resources and will not have any fiscal impact on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
ADMINISTRATION  
DHS ADMINISTRATIVE OFFICE  
MULTI STATE OFFICE BUILDING  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janell Hall by phone at 801-538-4143, by FAX at 801-538-4317, or by Internet E-mail at janellhall@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Ann Williamson, Executive Director

**R495. Human Services, Administration.**

**[R495-878. Americans with Disabilities Act Grievance Procedures. R495-878-1. Authority and Purpose.**

(1) This rule is made under authority of Section 63A-1-111 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Human Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded

from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

**R495-878-2. Definitions.**

(1) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities.

(2) "Department" means the Department of Human Services created by Section 62A-1-102.

(3) "Designee" means an individual appointed by the executive director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

(5) "Disability" is defined in 28 CFR 35.104.

(6) "Executive Director" means the executive director of the department.

(7) "Major life activities" is defined in 28 CFR 35.104.

(8) "Qualified Individual" is defined in 28 CFR 35.104.

**R495-878-3. Filing of Complaints.**

(1) Any qualified individual or their authorized representative may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals or their authorized representatives shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(3) Qualified individuals or their authorized representatives shall file their complaints within 180 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 180 days after alleged noncompliance.

(4) Each complaint shall:

(a) Be in writing and delivered to:

ADA Coordinator  
Department of Human Services  
195 North 1950 West  
Salt Lake City, Utah 84116

(b) Include the complainant's name and address;

(c) Include the nature and extent of the qualified individual's disability;

(d) Describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(e) Describe the action and accommodation desired; and

(f) Be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

**R495-878-4. Investigation of Complaints.**

(1) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R495-878-3(4) of this rule if it is not made available by the complainant.

(a) If the ADA Coordinator requires additional information from the complainant to complete the investigation, the ADA Coordinator shall send the complainant a records release form. This form shall be returned within 10 days of notice.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; or

(b) require facility modifications;

**R495-878-5. Recommendation and Decision.**

(1) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(2) Within 30 calendar days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director or designee shall render a decision within 10 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, and shall be delivered to the complainant.

**R495-878-6. Appeals.**

(1) The complainant may appeal the director's decision to the executive director within ten working days after the complainant's receipt of the director's decision.

(2) The appeal shall be in writing.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; or

(b) require facility modifications;

(6) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, and shall be delivered to the complainant.

(7) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing why the final decision is being delayed and the additional time needed to reach a final decision.

**R495-878-7. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.]

**R495-878. Americans with Disabilities Act and Civil Rights Constituent Grievance Procedures.**

**R495-878-1. Authority and Purpose.**

(1) This rule is authorized by Section 62A-1-111.

(2) The purpose of this rule is to provide for the prompt and equitable resolution of constituent complaints alleging any violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

**R495-878-2. Definitions.**

(1) "ADA/Civil Rights/LEP Coordinator" means the employee assigned by the executive director to facilitate the prompt and equitable resolution of constituent complaints alleging discrimination by employees of the Department.

(2) "Department" means the Department of Human Services created by Section 62A-1-102, and includes the divisions and offices created by Section 62A-1-105.

(3) "Constituent" means an individual who has applied to receive services, is currently receiving services, or who has received services from the Department, and includes that individual's authorized representative.

(4) "Division Coordinator" means an individual appointed by the executive director to investigate allegations of discrimination by employees of the Department.

(5) "Director" means the head of the division or office of the Department affected by a complaint filed under this rule.

(6) "Executive Director" means the executive director of the department.

**R495-878-3. Filing of Complaints.**

(1) A constituent may file a complaint alleging the violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

(2) A constituent shall file a complaint with the Department's ADA/Civil Rights/LEP Coordinator, unless the complaint includes allegations against the ADA/Civil Rights/LEP Coordinator, in which case the complaint shall be filed with the executive director.

(3) A constituent may file a written, oral, or electronic complaint to:

ADA/Civil Rights/LEP Coordinator  
Department of Human Services  
Executive Directors Office-4th floor  
195 North 1950 West  
Salt Lake City, Utah 84116; or  
dhscivilrightscomplaint@utah.gov

(4) To facilitate a thorough investigation, the constituent should file a written, oral, or electronic complaint with the Department ADA/Civil Rights/LEP Coordinator no later than 30 days from the date of the alleged circumstances giving rise to the complaint. A complaint should include the following information (complaint form available online at <http://hs.utah.gov/>):

(a) A detailed description of the alleged circumstances which caused the complaint, including dates and locations;

(b) The names and contact information of any and all persons involved in those circumstances;

(c) A detailed description of any actions taken by the constituent to address the complaint; and

(d) The desired result or outcome that the constituent is seeking from the Department.

**R495-878-4. Investigation of Complaints.**

(1) Within ten (10) days after receipt of the complaint, the ADA/Civil Rights/LEP Coordinator will assign the investigation of the complaint to the applicable Division Coordinator.

(a) The ADA/Civil Rights/LEP Coordinator will retain a copy of the complaint in a central file and provide deadlines for the Division Coordinator to conclude the investigation of the complaint.

(b) Investigations will generally be completed within 60 days after receipt of the complaint.

(2) Within ten (10) days after receipt of the complaint from the ADA/Civil Rights/LEP Coordinator, the Division Coordinator will notify the constituent in writing or electronically that an investigation of the complaint has commenced and will provide the deadline upon which the constituent should receive correspondence regarding the outcome of the investigation.

(a) The ADA/Civil Rights/LEP Coordinator shall be provided a copy of this correspondence from the Division Coordinator.

(b) A copy of all correspondence will be included in the ADA/Civil Rights/LEP Coordinator's central file.

(3) The Division Coordinator, or designee under the direction of the Division Coordinator, will conduct the investigation into the complaint and draft a proposed response to the complaint.

(a) The Division Coordinator shall gather and document all available relevant information.

(b) If the Division Coordinator is unable to complete the investigation and make a recommendation within the deadline established by the ADA/Civil Rights/LEP Coordinator, the constituent and the ADA/Civil Rights/LEP Coordinator shall be notified of the reason and how much additional time is needed.

**R495-878-5. Recommendation and Decision.**

(1) Completion of the investigation will result in a finding that the alleged circumstances occurred, did not occur, or could not be substantiated.

(a) If the alleged circumstances did occur, then the recommendation will also include suggestions to address barriers in the future involving similar circumstances.

(b) If the alleged circumstances could not be substantiated, but the Division Coordinator is able to identify areas where DHS practices may be improved, then suggestions may be made to address barriers in the future involving similar alleged circumstances.

(c) The Division Coordinator will be responsible for drafting the initial correspondence to the complainant.

(2) The correspondence will be sent by the Division Coordinator to the Director for final approval and mailing to the constituent.

(a) A copy of the correspondence will be sent to the ADA/Civil Rights/LEP Coordinator, and included in a central file.

(3) Within ten (10) business days after the conclusion of the investigation, the Division Coordinator will notify the constituent in writing concerning the outcome of the investigation.

(a) The Division Coordinator will log in the date that the written response is sent to the constituent to indicate that the complaint is completed.

(4) The Director shall take all reasonable steps to implement the recommendation, including the suggestions to ameliorate barriers in the future involving similar circumstances.

(5) Any of the foregoing deadlines may be reasonably extended for extenuating circumstances. Any extensions of time will be confirmed in writing to the constituent.

**R495-878-6. Appeals.**

(1) The constituent may appeal the outcome of the investigation to the Office of Administrative Hearings in accordance with Rule R497-100 Adjudicative Proceedings.

**KEY: grievance procedures, disabled persons**

**Date of Enactment or Last Substantive Amendment: [December 27, 2014]2015**

**Notice of Continuation: January 23, 2012**

**Authorizing, and Implemented or Interpreted Law: 62A-1-111; 63G-3-201(3); 28 CFR 35.107**

**Human Services, Administration,  
Administrative Services, Licensing  
R501-1  
General Provisions**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39334

FILED: 05/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify fee collection processes at the Office of Licensing. Changes in wording more accurately reflect what the Office of Licensing believes S.B. 8 (2015 General Session), (and previous legislative fee collecting bills) always intended. It clarifies rule to ensure fees are being collected correctly according to statute. The Department of Human Services (DHS) legal and fiscal assessment of our fees indicates that the Office of Licensing needs to be clearly gathering an initial license fee on each type first-time license at a site. More clear rule language will help the Office of Licensing collect fees more consistently. Because the legislature increased the fees by 200% in 2015, it is critical that the language and fee collection practices are clear going forward.

**SUMMARY OF THE RULE OR CHANGE:** This rule primarily clarifies language in order to ensure consistent fee collection at the Office of Licensing. It clarifies special circumstances such as what happens if a change of ownership occurs, a licensed entity determines to relocate, and what constitutes an initial versus renewal license fee.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-2-101 and Section 62A-2-106 and Section 63J-1-504

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is likely going to be an increase in fee collection (also known as increased state revenue) due to the clarification that each license type must pay an initial license fee regardless of how many license types may be being requested. Some fees will occur less frequently or at lower renewal rates due to the new wording, but on the whole it is estimated it will increase, not decrease, overall fees.

◆ **LOCAL GOVERNMENTS:** There is likely going to be an increase in fees due to the clarification that each license type must pay an initial license fee regardless of how many license types may be being requested. Some fees will occur less frequently or at lower renewal rates due to the new wording, but on the whole it is estimated it will increase, not decrease, overall fees. Because the biggest change is in language about initial license fees, it will have little or no impact on the

bulk of currently licensed entities because they are currently under the renewal fee rates. Only a small portion of licenses each year are actually initial, thus minimizing the effect of the wording changes. Some counties pay fees to the state for licensed facilities.

◆ **SMALL BUSINESSES:** Small businesses may be marginally affected. There is likely going to be an increase in fees due to the clarification that each license type must pay an initial license fee regardless of how many license types may be being requested. This is especially true for new, initial licenses. Some fees will occur less frequently or at lower renewal rates due to the new wording, but on the whole it is estimated it will increase, not decrease, overall fees. Because the biggest change is in language clarifies initial language, it will have little or no impact on the bulk of currently licensed entities that are currently in a renewal fee status.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This will affect larger businesses/corporations similarly. There is likely going to be an increase in fees due to the clarification that each license type must pay an initial license fee regardless of how many license types may be being requested. Some fees will occur less frequently or at lower renewal rates due to the new wording, but on the whole it is estimated it will increase, not decrease, overall fees. Because the biggest change is in language about initial license fees, it will have little or no impact on the bulk of currently licensed entities because they are currently under the renewal fee rates. Only a small portion of licenses each year are actually initial, thus minimizing the effect of the wording changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Nothing outside of the clarification of fee language is being changed in this amended rule. Compliance activities outside of fee payments remain unaltered.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** It is not suspected that this rule change will significantly affect business. It will simply make more clear for the Office of Licensing and the public how fees are collected.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

HUMAN SERVICES  
ADMINISTRATION, ADMINISTRATIVE SERVICES,  
LICENSING  
195 N 1950 W 1ST FLR  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at [dmoore@utah.gov](mailto:dmoore@utah.gov)  
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjonessrobbins@utah.gov](mailto:jhjonessrobbins@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Diane Moore, Director

**R501. Human Services, Administration, Administrative Services, Licensing.**

**R501-1. General Provisions.**

**R501-1-1. Authority and Purpose.**

1. This Rule is authorized by Section 62A-2-101, et seq.
2. This Rule clarifies the standards for:
  - a. approving or denying a human services program application, or
  - b. approving, extending, conditioning, denying, suspending, or revoking a human services program license.
3. This Rule clarifies the standards for inspecting, monitoring, and investigating a human services program.
4. This Rule clarifies the standards for approving or denying a variance to the Human Services Administrative Rules, Title R501, regarding the licensing of human services programs.

**R501-1-2. Definitions.**

1. "Applicant" means a person who submits an application to the Office of Licensing to obtain a license to operate a human services program.
- ~~[1]2. "Certified local inspector" is defined in Section 62A-2-101.~~
- [3]2. "Child" is defined in Section 62A-2-101.
- [4]3. "Client" is defined in Section 62A-2-101.
- [5]4. "Human services program" is defined in Section 62A-2-101.
- [6]5. "Initial License" means the license issued to operate a human services program during the program's first year of operation.
- [7]6. "Licensee" means a person with a current, valid license to operate a human services program, issued by the Office of Licensing.
- [8]7. "Local government" is defined in Section 62A-2-101.
- [9]8. "Person" includes an individual, agency, association, partnership, corporation, or governmental entity.
- [10]9. "Probationary License" means a temporary initial license issued to operate a new human services program during the period of time that the Office of Licensing designates for the program to transition from substantial compliance to full compliance with licensing requirements.
- [11]10. "Regular business hours" is defined in Section 62A-2-101.
- [12]11. "Residential Treatment" is defined in Section 62A-2-101.
- [13]12. "Renewal License" means the license issued to operate a human services program after the program's first year of operation.
13. "Site" A human services program identified by a single geographic location, including but not limited to a single dwelling, building, facility, or campus.

14. "Substantial compliance" means a human services program presently conforms to all licensing requirements with the exception of minor requirements that do not create a risk of harm to a child or vulnerable adult. Examples of minor requirements that do not create a risk of harm to a child or vulnerable adult include, but are not limited to, individual staff or client files in a residential treatment program that has not yet provided services, individual staff or client files in a child placing agency that has not yet provided services, or completion of training in a kinship foster care placement.

15. "Variance" means a temporary deviation from an administrative rule.

16. "Vulnerable Adult" is defined in Section 62A-2-101.

**R501-1-3. Licensing Procedure.**

1. Application for Initial License.  
A person seeking an initial license to operate a human services program shall submit:
  - a. an application on the forms provided by the Office of Licensing;
  - b. the licensing fee required ~~[of a new program]~~for the category of human services program license sought;
  - c. a completed background screening application and consent form, and all required identifying information, in accordance with R501-14, for each adult associated with the proposed human services program;
  - d. the applicant's proposed policy and procedure manual;
  - e. documentation verifying compliance with all local government zoning, health, fire, and business requirements; and
  - f. for residential treatment programs, a copy of the notice of its intent to operate a residential treatment program and proof of service, in accordance with Section 62A-2-108.2.
2. Application for Renewal License.  
A person seeking renewal of a license to operate a human services program shall submit:
  - a. an application on the form provided by the Office of Licensing;
  - b. the licensing fee required for the category of human services program;
  - c. verification of current background screening approval, in accordance with R501-14, for each adult associated with the human services program;
  - d. a copy of all modifications that have been made to the licensee's policy and procedure manual since the previous year's licensure;
  - e. documentation verifying current compliance with all local government zoning, health, fire, and business requirements; and
  - f. for residential treatment programs, a copy of the notice of its intent to operate a residential treatment program and proof of service, in accordance with Section 62A-2-108.2.
  - g. the application for renewal of a license shall be submitted no less than thirty days and no more than sixty days prior to the expiration date of the current license.
3. An application and required documentation that are not legible, complete, dated and signed shall be returned to the applicant without further action.
4. On-Site Licensing Review
  - a. An applicant for an initial license shall permit the Office of Licensing to conduct an unlimited on-site evaluation of the physical

facility and grounds, and to interview persons associated with the proposed program to verify compliance with all licensing requirements.

i. The Office of Licensing shall approve an application for an initial human services program license only after verifying full compliance with all licensing requirements.

ii. The Office of Licensing may approve a probationary license only after verifying substantial compliance with licensing requirements.

A. The Office of Licensing shall include an expiration date on a probationary license, which shall not exceed 6 months from the date of issue.

B. A probationary licensee that fails to achieve full compliance with licensing requirements prior to the expiration of the probationary license shall not be granted an extension, and shall not accept any fees, entering any agreements to provide client services, or provide any client services.

C. A probationary licensee that is not granted an initial license may submit a new application for an initial license 3 months after the expiration of the probationary license.

iii. The Office of Licensing shall deny an application for an initial human services program license when substantial compliance with all licensing requirements cannot be verified.

iv. The Office of Licensing shall permit an applicant for an initial human services program license to withdraw the application at any time prior to denying the application when an applicant requests additional time to demonstrate compliance with all licensing requirements.

~~\_\_\_\_\_ A. An application that has been voluntarily withdrawn by an applicant may be resubmitted, within six months of the date of withdrawal, for reconsideration without payment of additional fees.~~

] b. The Office of Licensing shall conduct a minimum of one annual on-site review of each human services program site.

i. The Office of Licensing shall approve an application for a human services program license renewal only after verifying full compliance with all licensing requirements.

ii. The Office of Licensing shall deny an application for a human services program license renewal when full compliance with all licensing requirements cannot be verified.

iii. The Office of Licensing may extend the current license of a human services program in accordance with this rule.

A. A renewal license may be extended for up to sixty days past the current license expiration date if the Office of Licensing determines that the human services program is in substantial compliance with licensing requirements.

B. A notice of extension shall identify the extension expiration date and the requirements that the human services program must comply with to achieve full compliance.

C. A human services program that fails to achieve full compliance with licensing requirements prior to the expiration of the extension shall not be granted additional extensions.

D. The Office of Licensing shall deny the renewal application of a human services program that fails to achieve full compliance with licensing requirements prior to the expiration of an extension.

c. The Office of Licensing shall complete a written monitoring report or a checklist identifying areas of compliance and non-compliance with licensing requirements after each on-site review.

5. The license shall state the name and site address of the human service program facility, category of service, maximum consumer capacity, and the start date and expiration date.

6.a. A license that has expired is void.

b. A license expires at midnight one year after the date it was issued, unless:

i. the license states an earlier expiration date;

ii. the license has been extended in accordance with this rule;

iii. the license has been revoked by the Office of Licensing; or

iv. the license has been relinquished to the Office of Licensing by the licensee.

7.a. A licensee shall not exceed the licensed maximum client capacity indicated on the license issued by the Office of Licensing.

b. A licensee seeking to increase the maximum client capacity of a license shall submit an application for a renewal license in accordance with this rule.

~~\_\_\_\_\_ 8.a. A licensee shall not provide client services at a new site or change the services it provides without first obtaining a new license issued by the Office of Licensing.~~

~~\_\_\_\_\_ b. A licensee seeking to change a human services program's site address or services provided shall submit an application for a new license in accordance with this rule.~~

] [9]8. A person with an expired license wishing to operate a human services program shall submit an application for a new license in accordance with this rule.

~~\_\_\_\_\_ 10. A license is deemed void when the human services program has a change of ownership, management, administration, policies, or site address:~~

~~\_\_\_\_\_ a. A human services program that has a change of ownership or management shall apply for a renewal license in accordance with this rule.~~

~~\_\_\_\_\_ b. A human services program that has a change of administration, policies, or site address shall apply for an initial license in accordance with this rule.~~

] 9. A license is deemed void when the human services program has a change of location unless the program obtains prior written approval of the relocation of their license:

a. Relocation can only occur when an existing program is moving to a new location with no change of license type, ownership, or substantial policy or service changes. Relocation does not mean adding an additional site to a currently licensed program.

b. A human services program, excluding foster care, that intends to relocate to a new site may have their license transferred to the new site only after:

i. payment of renewal fees;

ii. request to relocate submitted to the Office of Licensing at least 30 days prior to the move;

iii. Office of Licensing inspection and approval of licensure at the new site.

c. A foster home that intends to relocate to a new site may have their license transferred to the new site only after:

i. request to relocate submitted to the Office of Licensing at least 30 days prior to the move;

ii. Office of Licensing inspection and approval of licensure at the new site within two weeks if foster children are placed, and

within 30 days if there are no current foster placements. If foster children are placed, it is the responsibility of the licensed foster parent to ensure health and safety of the foster child pending transfer to the new site.

10. No clients may be present and no services may be provided at a relocation site until after all requirements of 9 above have been met, with the exception of currently placed foster children.

11. A human services program that has a change of ownership shall submit to the Office of Licensing updated documentation in advance of the transfer of ownership, including but not limited to proof of continued insurance, updated organization chart, and business license. Failure to do so will result in a revocation of the license/s.

#### **R501-1-4. Fees.**

1. The Office of Licensing shall assess and collect licensing fees in accordance with Sections 62A-2-106 and 63J-1-~~303~~504.

a. A~~n assessed~~ fee shall not be transferred, prorated, reduced, waived, or refunded.

b. No licensing fee shall be assessed on a foster home or on a Division of the Department of Human Services.

c. An initial application fee will expire after 12 months if an initial or probationary license has not been issued in that timeframe.

2. The Office of Licensing ~~[shall not perform]~~is not required to perform an on-site review until the applicant pays the assessed licensing fee in full.

3. Separate initial license fees shall be assessed for each initial category of human services program license offered at a program site.

~~[3]4. Separate renewal license fees, plus any applicable capacity fees, shall be asses for each license category that is renewed at a program site.~~

a. ~~[Fees]~~Renewal fees shall be calculated according to the maximum licensed client capacity of the human services program, and not according to the number of clients served in the program.

~~[a. A human services program with a valid, current license that intends to increase its maximum licensed client capacity shall submit an application for a renewal license and shall be assessed a renewal application fee according to the increased maximum client capacity.~~

~~] b. A human services program with a current license that intends to increase its maximum licensed capacity shall submit an application and fee for a renewal license. The fee shall include the capacity charges for the new total maximum licensed capacity.~~

~~[4. Fees shall be assessed for each program site of a human services program.~~

~~[a]5. A human services program with more than one building, unit, or suite at one site may ~~[choose]~~request to have its fees assessed and licenses/s issued:~~

~~[i]a. so that ~~[one]~~each category of license will be issued ~~[for each on-site building]~~to include all on-site buildings, units, or suites; or~~

~~[ii]b. so that ~~[one]~~each category of license will be issued for each ~~[site:]~~ individual on-site building, unit, or suite.~~

~~[b. A human services program with a valid, current license that intends to provide services at an additional site shall submit an application for an initial license at the additional site.~~

~~i. A human services program with a valid, current license that proposes to provide identical services at additional site shall be assessed a renewal application fee.~~

~~ii. A human services program with a valid, current license that will not provide identical services at an additional site shall be assessed an initial application fee.~~

~~5. Fees shall be assessed for each category of human services program offered at a program site.~~

~~a]6. A human services program with a ~~[valid,]current~~ license that intends to provide additional services at the currently licensed site shall submit an application and fee for ~~[a renewal]~~an initial license~~[and shall be assessed a renewal application fee].~~~~

#### **R501-1-5. Monitoring.**

1. The Office of Licensing shall investigate reports of unlicensed human services programs.

a. An unlicensed human services program that fails to submit an application and become licensed shall be referred to the Offices of the Attorney General and the appropriate County Attorney for prosecution.

2. The Office of Licensing shall investigate complaints regarding a licensed human services program.

a. A certified local inspector may investigate complaints regarding a residential treatment program in accordance with Section 62A-2-108.3 and R501-4

3. Unannounced administrative inspections may be conducted during regular business hours.

4. The Office of Licensing shall document violations of administrative rules or statutes

5. The Office of Licensing shall provide written notification to the human services program of violations of administrative rules or statutes and any sanctions imposed.

#### **R501-1-6. Corrective Action Plans.**

1. The Office of Licensing may require a human services program to submit a written corrective action plan in response to a written notification of its violations of administrative rules or statutes.

2. A human services program shall submit a written corrective action plan to the Office of Licensing within ten calendar days of receiving written notification of its violations of administrative rules or statutes.

3. The written corrective action plan shall include the following:

a. a statement of each violation as identified by the Office of Licensing,

b. a detailed description of how the human services program will correct each violation and prevent additional violations of administrative rules or statutes;

c. the date by which the human services program will achieve complete compliance with administrative rules or statutes; and

d. the signature of all owners and managers of the human services program.

4. The Office of Licensing shall issue a Notice of Agency Action imposing sanctions for a human service program's violations of administrative rules or statutes if the program fails to submit a written corrective action plan in compliance with this rule.

5. The Office of Licensing shall review the submitted written corrective action plan and:

a. inform the human services program that the written corrective action plan is approved; or

b. inform the human services program that the written corrective action plan fails to satisfy the requirements of this rule.

i. The Office of Licensing may permit a human services program to amend its written corrective action plan within 5 additional calendar days to satisfy the requirements of this rule.

6. The Office of Licensing shall issue a Notice of Agency Action imposing sanctions for a human services program's violations of administrative rules or statutes if the program fails to comply with a written corrective action plan approved by the Office of Licensing.

7. A human services program shall post each approved corrective action plan and each Notice of Agency Action where it can be easily reviewed by clients, parents or guardians of clients, and visitors.

a. Each approved corrective action plan and each Notice of Agency Action shall remain posted until the Office of Licensing issues written confirmation that the program has achieved compliance with administrative rules and statutes.

**R501-1-7. License Violation.**

1. An applicant shall not accept any fees, enter any agreements to provide client services, or provide any client services until after receiving written confirmation that the Office of Licensing has approved and issued a license to provide those services.

2. The Office of Licensing may exercise its professional judgment and deny, condition, suspend, or revoke a license for any violation of the administrative Rules or local, state, or federal law.

3. The Office of Licensing shall issue a written notice of agency action when a license sanction is imposed. The notice of agency action shall identify each violation and describe the factual basis underlying each violation.

4. The Office of Licensing may place a license on conditional status. A conditional status allows a program that is in the process of correcting administrative rule violations to continue operation subject to conditions established by the Office of Licensing.

5.a. A human services program that has had its license suspended is prohibited from providing any services to clients until after the suspension period has expired.

b. A human services program that has had its license expire during the suspension period shall be required to submit an application for an initial license after the suspension period has expired and obtain a new license prior to providing any services to clients.

6. A human services program that has had its license revoked is prohibited from providing any services to clients until after a new license is issued in accordance with Section 62A-2-113.

**R501-1-8. Due Process.**

1. A notice of agency action shall inform the applicant or licensee of the right to appeal in accordance with Administrative Rule 497-100 and Section 63G-4-101, et seq.

2. A licensee shall not accept any new clients while an appeal is pending.

**R501-1-9. Variances.**

1. A licensee shall not deviate from any administrative rule without first receiving written approval of a specific variance request signed by the Director of the Office of Licensing or the Director's designee.

2. The Director of the Office of Licensing, or the Director's designee, may grant a variance to the administrative rules of the Office of Licensing, if the Director or the Director's designee determines that a variance:

a. is in the best interests of the client; and

b. may be granted without compromising any health and safety requirements.

3. The licensee must submit a written request for a variance to the licensing specialist. A request for a variance shall specifically describe:

a. the rule for which the variance is requested;

b. how the licensee will ensure the best interests of the client will be maintained;

c. what procedures will be implemented to ensure the health and safety of all clients; and

d. the proposed variance expiration date.

4. The licensing specialist shall review the written request for a variance and forward it to the Director or the Director's designee together with the licensing specialist's recommendations to approve, approve with modifications, or deny the request.

5. The Office of Licensing shall notify the licensee of the approval, approval with modifications, or denial of the variance, in writing, within 30 days.

**R501-1-10. Abuse or Neglect, or Exploitation.**

1. The Office of Licensing shall immediately notify the appropriate investigative or law enforcement agency of any allegations or evidence of abuse, neglect, or exploitation of any child or vulnerable adult.

**R501-1-11. Compliance.**

Any licensee that is in operation of the effective date of this rule shall be given 30 days after the effective date to achieve compliance with this rule.

**KEY: licensing, human services**

**Date of Enactment or Last Substantive Amendment:** [~~October 18, 2005~~]**2015**

**Notice of Continuation:** October 18, 2012

**Authorizing, and Implemented or Interpreted Law:** 62A-2-101 et seq.

**Human Services, Administration,  
Administrative Services, Licensing**

**R501-4**

**Certified Local Inspectors**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 39333

FILED: 05/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Statute was modified years ago to remove all reference and language to certified local inspectors. This rule should have been updated at that time, but wasn't. This rule is no longer enforced nor supported by statute, Section 62A-2-101.

**SUMMARY OF THE RULE OR CHANGE:** This rule needs to be repealed to match removal of certified local inspectors from statute. This rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-2-106

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--This has not been enforced in years.
- ◆ **LOCAL GOVERNMENTS:** None--This has not been enforced in years.
- ◆ **SMALL BUSINESSES:** None--This has not been enforced in years.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This has not been enforced in years.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no increased costs due to this repeal. This has not been used for years so no changes for the public.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no increased costs due to this repeal. This has not been used for years so no changes for the public.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

HUMAN SERVICES  
 ADMINISTRATION, ADMINISTRATIVE SERVICES,  
 LICENSING  
 195 N 1950 W 1ST FLR  
 SALT LAKE CITY, UT 84116  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**THIS RULE MAY BECOME EFFECTIVE ON:** 06/22/2015

**AUTHORIZED BY:** Diane Moore, Director

**R501. Human Services, Administration, Administrative Services, Licensing.**

**[R501-4. Certified Local Inspectors.**

**R501-4-1. Authority and Purpose.**

1. This rule is authorized by Section 62A-2-108.3.
2. This rule establishes procedures for complying with Section 62A-2-108.3 and for the performance of inspections by a certified local inspector.

**R501-4-2. Definitions.**

1. "Applicant" means a person who has submitted an application to the Department of Human Services Office of Licensing under Section 62A-2-108.3.
2. "Certified local inspector" is defined in Section 62A-2-101.
3. "Conduct" means behavior that may negatively impact an individual's ability to perform the functions of a certified local inspector, including but not limited to dishonesty, discourtesy, aggressiveness, or working while under the influence of drugs or alcohol.
4. "Emergency" means a situation where a reasonable person would conclude there is an on-site imminent risk to the health or safety of any individual.
5. "Local government" is defined in Section 62A-2-101.
6. "Personal communication" means a two-way conversation, and does not include an unanswered voice mail or e-mail message.
7. "Regular business hours" is defined in Section 62A-2-101.
8. "Residential treatment program" is defined in Section 62A-2-101.

**R501-4-3. Application for Designation.**

1. The governing body of a local government and a local government employee may jointly submit an application to designate or renew the designation of the local government employee as a certified local inspector on a form provided by the Office of Licensing.
  - a. An application to renew the designation of a certified local inspector shall be submitted at least thirty days prior to the expiration date of current designation.
  2. An initial or renewal certified local inspector application shall be submitted together with:
    - a. the applicant's background screening application and consent form, and all required identifying information, in accordance with R501-3;
    - b. the applicant's resume, which shall describe the applicant's duties and responsibilities in each position held;
    - c. the applicant's education and training history;
    - d. a copy of all complaints received regarding the applicant and the disposition of those complaints, or a letter from the local government confirming that the applicant has received no complaints;
    - e. three letters of reference describing the applicant's character, demeanor, and interactions with the public; and
    - f. an acknowledgment signed by the applicant and the governing body of the applicant's local government employer, and approved by the local government attorney, that the local government employer bears sole responsibility for the applicant's salary and expenses, and agrees to indemnify, defend, and hold harmless the Office of Licensing, the Department of Human Services, and the State of Utah for any act or omission of the applicant.
  3. A certified local inspector application that is not legible, complete, dated and signed shall be returned to the governing body of the local government without further action.

**R501-4-4. Training.**

1. The Office of Licensing shall offer training for applicants twice annually. All classes shall be held in the Office of Licensing administrative offices in Salt Lake City.

~~2. An applicant shall submit all required application materials at least ten business days prior to the first day of the training class.~~

~~3. An applicant shall read all materials sent from the Office of Licensing prior to the first day of the training class.~~

~~4. An applicant shall complete training on the following subjects:~~

~~a. Section 62A Chapter 2, Licensure of Programs and Facilities;~~

~~b. R501-1, General Provisions;~~

~~c. R501-2, Core Rules;~~

~~d. R501-4, Certified Local Inspectors;~~

~~e. R501-16, Intermediate Secure Treatment Programs for Minors;~~

~~f. R501-19, Residential Treatment Programs;~~

~~g. the Fourth Amendment to the Constitution of the United States; and~~

~~h. inspection procedures.~~

**R501-4-5. Local Certified Inspector Designation.**

~~1. The Office of Licensing shall not designate an initial or renewal applicant as a certified local inspector unless:~~

~~a. the applicant submits all materials required by the Office of Licensing;~~

~~b. the applicant attends and participates in the entire course of training presented by the Office of Licensing;~~

~~c. the applicant successfully completes the training presented by the Office of Licensing, as evidenced by the applicant's multiple choice test scores;~~

~~d. the background screening of the applicant is approved in accordance with R501-3; and~~

~~e. the Office of Licensing determines that, based upon the conduct of the applicant, it is in the public's best interest to designate the applicant as a certified local inspector.~~

~~2. A certified local inspector shall comply with~~

~~a. Section 62A-2-108.3;~~

~~b. R501-4, Certified Local Inspectors;~~

~~c. the Fourth Amendment to the Constitution of the United States;~~

~~d. inspection procedures; and~~

~~e. other applicable local, state, and federal laws.~~

~~3. Designation as a certified local inspector shall be revoked if the Office of Licensing determines that, based upon the conduct of the certified local inspector, continued designation is not in the public's best interest:~~

~~a. The local government employer of a certified local inspector shall immediately notify the Office of Licensing of any conduct by a certified local inspector that may not be in the public's best interest~~

~~4. The local government employer of a certified local inspector shall notify the Office of Licensing of a certified local inspector's change in employment or termination of employment within two business days.~~

~~5. The governing body of a new local government employer of a certified local inspector who has changed jobs, that desires that the certified local inspector retains certified local inspector designation, shall submit:~~

~~a. an application to designate the local government employee as its certified local inspector on a form provided by the Office of Licensing;~~

~~b. the certified local inspector's updated resume; and~~

~~c. an acknowledgment signed by the applicant and the governing body of the certified local inspector's new local government employer that the new local government employer bears sole responsibility for the applicant's salary and expenses, and agrees to indemnify, defend, and hold harmless the Office of Licensing, the Department of Human Services, and the State of Utah for any act or omission of the applicant.~~

~~d. An otherwise current certified local inspector designation shall be suspended until:~~

~~i. all information required by R501-4-5.5 is received by the Office of Licensing;~~

~~ii. the Office of Licensing determines whether continued designation of the certified local inspector is in the public's best interest; and~~

~~iii. an updated certified local inspector identification is issued.~~

~~iv. an updated certified local inspector identification shall expire on the same date as the underlying identification card.~~

**R501-4-6. Inspections.**

~~1. A certified local inspector shall visibly display the photo identification card issued by the Office of Licensing at all times while inspecting a licensed residential treatment facility.~~

~~2. Except in an emergency, a certified local inspector shall provide prior notice to the Office of Licensing of the certified local inspector's intent to inspect a licensed residential treatment facility, by personal communication with the certified local inspector's assigned licensing specialist contact or the licensing specialist's supervisor.~~

~~3. Except in an emergency, a certified local inspector shall obtain permission to inspect a licensed residential treatment facility prior to entering the facility, by personal communication with the certified local inspector's assigned licensing specialist contact or the licensing specialist's supervisor.~~

~~4. A certified local inspector shall provide the report required by Section 62A-2-108.3(4)(e) and a copy of all records obtained from a licensed residential treatment facility to the certified local inspector's assigned licensing specialist contact or the licensing specialist's supervisor.~~

**R501-4-7. Administrative Hearing.**

~~A notice of agency action that denies an applicant's initial or renewal request to be designated as a certified local inspector shall inform the applicant and the local government employer of their right to request an administrative hearing in accordance with Administrative Rule 497-100 and Section 63G-4-101, et seq.~~

**KEY: human services, licensing, certified local inspector**

**Date of Enactment or Last Substantive Amendment: October 18, 2005**

**Notice of Continuation: October 6, 2010**

**Authorizing, and Implemented or Interpreted Law: 62A-2-108 et seq.]**

**Insurance, Administration**  
**R590-220**  
**Submission of Accident and Health**  
**Insurance Filings**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39312

FILED: 04/29/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update the rule for citation changes, Affordable Care Act changes, and to add the procedure for requesting a document to be designated as protected.

**SUMMARY OF THE RULE OR CHANGE:** The change adds and updates several code citations throughout the body of the rule. It adds a new definition for "Non-2014 PPACA compliant health benefit plan". It also adds a classification of documents section that explains the procedure to request that a document be designated by the Department as protected. Requires insurers to use Utah Filed Date or SERFF tracking number when updating forms. Adds a Utah Bona Fide Employer Association Group Questionnaire for approval of a group. The change also makes other minor additions, removals, and changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-2-201.1 and Section 31A-22-1404 and Subsection 31A-2-201(3) and Subsection 31A-2-202(2) and Subsection 31A-2-212(5) and Subsection 31A-22-605(4) and Subsection 31A-22-620(3)(f) and Subsection 31A-30-106(1) and Subsection 31A-30-106(4) and Subsection 31A-30-106.1(13) and Subsection 31A-30-106.1(14)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates The NAIC Uniform Life, Accident and Health, Annuity, and Credit Product Coding Matrix, published by NAIC, 01/01/2015

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The change is predominantly clerical and will not require any additional costs to the state.
- ◆ **LOCAL GOVERNMENTS:** Local government is not affected by this rule because all form filing happens at the state level.
- ◆ **SMALL BUSINESSES:** Small businesses will not be affected because it regards form filing by insurers.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other entities will see increased costs or savings because the rule merely governs how insurers submit rate and form filings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None-- Insurers are already submitting rate and form filings in this manner. The rule updates and clarifies the procedures.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no additional fiscal impact. This rule updates the filing rule to reflect current filing requirements for health insurers.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2015

AUTHORIZED BY: Todd Kiser, Commissioner

**R590. Insurance, Administration.**

**R590-220. Submission of Accident and Health Insurance Filings.**

**R590-220-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Sections 31A-2-201.1 and 31A-22-1404, and Subsections 31A-2-201(3), 31A-2-202(2), ~~31A-2-212(5)~~, 31A-22-605(4), 31A-22-620(3)(f), 31A-30-106(1) and (4), and 31A-30-106.1(13) and (14).

**R590-220-2. Purpose and Scope.**

- (1) The purpose of this rule is to set forth procedures for submitting:
  - (a) accident and health filings required by Section 31A-21-201;
  - (b) individual accident and health filings in accordance with Section 31A-22-605 and Rule R590-85;
  - (c) Medicare supplement filings in accordance with Sections 31A-22-605 and 31A-22-620, and Rules R590-85 and R590-146;
  - (d) long term care filings required by Section 31A-22-1404 and Rule R590-148; and
  - (e) health benefit plan filings required by Subsection 31A-2-212(5), Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act<sup>[5]</sup>; and Rule R590-167.
- (2) This rule applies to:
  - (a) all types of accident and health insurance products; and

(b) group accident and health contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

**R590-220-3. Documents Incorporated by Reference.**

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Product Coding Matrix," effective January 1, ~~2011~~2015, is hereby incorporated by reference and is available on the department's web site, [www.insurance.utah.gov](http://www.insurance.utah.gov).

**R590-220-4. Definitions.**

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Discretionary group" means a group that has been specifically authorized by the commissioner under Subsection 31A-22-701(1)(b)(2)(c).

(3) "Electronic filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.

(4) "Eligible group" means a group that meets the ~~definition~~ requirements in Subsection 31A-22-701(1)(a).

(5) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(6) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(7) "File For Acceptance" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was accepted.

(8) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(9) "Filer" means a person who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

- (a) a policy;
- (b) a rate, rate manual, or rate methodologies;
- (c) a form;
- (d) a document;
- (e) a plan;
- (f) a manual;
- (g) an application;
- (h) a report;
- (i) a certificate;
- (j) an endorsement or rider;
- (k) an actuarial memorandum, demonstration, and certification;
- (l) a licensee annual statement;
- (m) a licensee renewal application;[-øø]

(n) an advertisement[-:];

~~(o) a binder; or~~

~~(p) an outline of coverage.~~

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Non-2014 PPACA compliant health benefit plan" means a health benefit plan that is either:

~~(a) a grandfathered health plan as defined in 45 CFR 147.140(a); or~~

~~(b) a transitional health benefit plan as outlined by the letter to Insurance Commissioners from the Centers for Medicare and Medicaid Services dated November 14, 2013 and extended by the Insurance Standards Bulletin Series, Extension of Transitional Policy through October 1, 2016 dated March 5, 2014. A transitional plan is also known as a grandmothers health plan.~~

~~(16)~~ "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

~~(17)~~ "Rating methodology change" for the purpose of a non-2014 PPACA compliant health benefit plan means a:

(a) change in the number of case characteristics used by a covered licensee to determine premium rates for health benefit plans in a class of business;

(b) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) change in the method of allocating expenses among health benefit plans in a class of business; or

(d) change in a rating factor, with respect to any case characteristic, if the change would produce a change in premium for any individual or small employer that exceeds 10%. A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12-month period. If a covered licensee changes rating factors with respect to more than one case characteristic in a 12-month period, the licensee shall consider the cumulative effect of all such changes in applying the 10% test.

~~(18)~~ "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

~~(19)~~ "SERFF" means the System for Electronic Rate and Form Filings.

(20) "Type of insurance" means a specific accident and health product including dental, health benefit plan, long-term care, Medicare supplement, income replacement, specified disease, or vision.

~~[(19)](21)~~ "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a ~~[filing has been accepted.]~~ paper filing has been accepted. If the Utah Filed Date is used for compliance with any section of this rule, a complete copy of the paper filing with the filed date stamped on the filing must be attached as a supporting document. In addition, if the filing was amended at any time, the amendment filing must also be attached as a supporting document.

#### **R590-220-5. General Filing Information.**

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) A licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

- (a) is not considered filed with the department;
- (b) must be submitted as a new filing; and
- (c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

- (a) A filing may be reviewed:
  - (i) when submitted;
  - (ii) as a result of a complaint;
  - (iii) during a regulatory examination or investigation; or
  - (iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer shall include a description of the filing correction[s].

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description and include a description of the filing correction[s].

(7) If responding to a Filing Objection Letter, an Order to Prohibit Use, or a Filing Rejection, ~~[refer to]~~ review Section R590-220-~~[+6]~~17 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

#### **R590-220-6. Filing Submission Requirements.**

(1) All filings must be submitted as an electronic filing.

(2) A filing must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4)(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing including:

- (A) the intent of the filing; and
- (B) the purpose of each document within the filing.

(ii) Indicate if the filing:

- (A) is new;
- (B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date or SERFF tracking number;

(C) includes documents for informational purposes; if so, provide the Utah Filed Date or SERFF tracking number; or

(D) does not include the base policy; if so, provide the Utah Filed Date or SERFF tracking number for ~~[of]~~ the base policy and all amendments and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The Utah Accident and Health Insurance Filing Certification must be properly completed, signed, and attached to the Supporting Documentation tab. A false certification may subject the licensee to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

- (i) copy of domicile approval for the exact same filing;
- (ii) filing status information which includes:
  - (A) a list of the states to which the filing was submitted;
  - (B) the date submitted; and
  - (C) summary of the states' actions and their responses; or
- (iii) if the filing is specific to Utah and only filed in Utah,

then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire, Utah Bona Fide Employer Association Group Questionnaire, or Discretionary Group Authorization Letter. A group filing must ~~[attach]~~ have attached to the Supporting Documentation tab either a:

(i) signed and fully completed Utah Accident and Health Insurance Group Questionnaire; or

(ii) copy of the Utah Accident and Health Insurance Discretionary Group Authorization letter ~~[-]; or~~

(iii) signed and fully completed Utah Bona Fide Employer Association Group Questionnaire.

(e) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(f) Variable data.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation[-]; and

(E) all possible variations of the variable data are shown on the statement, such as, "Deductible is \$x-\$xxxx in \$xx increments."

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(g) Utah Accident and Health Insurance Intake Survey.

(i) The intake survey must be properly completed, signed and attached to the Supporting Documentation tab for Form and Form/Rate filings submitted with the type of insurance of "H06", "H15G," "H15I," "H16G," "H16L," "H0rg02G," or "H0rg02L." The intake survey is not required for Rate or Report filings.

(ii) If the intake survey is incomplete or not attached, the filing will be rejected.

(h) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule.

(i) Reports are exempt from the filing submission requirement listed in Subsections R590-220-6(4)(c), (d), (f), and (g).

(j) Underline and Strikethrough Version. A filing submitted for a correction, modification, or replacement of existing language shall have an underline and strikethrough version of the form included with the corrected, modified, or replacement form on the Form Schedule Tab.

(5) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and reports.

(6) All filings must be submitted in SERFF correctly utilizing the NAIC Uniform Life, Accident and Health, Annuity, and Credit Product Coding Matrix

#### **R590-220-7. Procedures for Form Filings.**

(1) Forms in General.

(a) Forms are File and Use filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form or printer's proof format. A draft may not be submitted.

(d) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing. Include the Utah Filed Date or SERFF tracking number for the application in the Filing Description.

(3) Policy Filing.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, outline of coverage, certificate, rider, endorsement, and actuarial memorandum.

(c) Only one policy filing for a single type of insurance may be filed, except as stated in Subsection R590-220-7(3)(d).

(d) A Medicare supplement filing may include more than one policy filing but each filing is limited to only one of each of the Medicare supplement plans A through N.

(4) Rider or Endorsement Only Filing.

(a) Up to three related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) The filing must include:

(i) ~~[A]~~ a listing of all base policy form numbers, title and Utah Filed Dates or SERFF tracking numbers; and

(ii) a description of how each filed rider or endorsement affects the base policy.

(d) Unrelated riders or endorsements may not be filed together.

(5) Outline of Coverage. If an outline of coverage is required to be issued with a policy, rider, or an endorsement, the outline of coverage must be filed when the policy, rider or endorsement is filed.

#### **R590-220-8. Additional Procedures for Individual Accident and Health Market Filings.**

(1) A filer submitting an individual accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Part 6, Accident and Health Insurance; and

(c) Rules R590-76, R590-85, R590-122, R590-126, R590-131, ~~and~~ R590-192, R590-203, R590-215, and R590-218; and

(d) for health benefit plan submissions, additionally review:

(i) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and

(ii) Rules R590-167, R590-176, R590-194, R590-200, R590-233, R590-237, R590-247, R590-259, R590-261, R590-266, R590-269, R590-271 and R590-220-10.

(2) This section does not apply to filings for individual health benefit plans that are subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act, and Rule R590-167. Individual health benefit plan filings are discussed in Section R590-220-10.

(3) Rate and rate documentation filings.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(4) ~~Every~~An individual accident and health policy, rider, or endorsement affecting benefits shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary.

(a) A rate filing need not be submitted if the filing does not require a change in premiums, however the reason why there is not a change in premium must be explained in the Filing Description.

(b) Rates must be filed in accordance with the requirements of Section 31A-22-602, Rules R590-85, and R590-220.

(c) This subsection does not apply to a rate filing for a health benefit plan. A filer submitting a rate filing for a health benefit plan should review R590-220-10.

(5) A filer submitting a long term care filing, including an endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(6) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

#### **R590-220-9. Additional Procedures for Group Market Form Filings.**

(1) A filer submitting a group accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Parts 6 and 7;

(c) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and

(d)(i) Rules R590-76, R590-85, R590-122, R590-126, R590-131, R590-146, R590-148, R590-192, R590-200, R590-203, R590-215, R590-233, and [Section]R590-220-10.

(ii) Filers submitting group health benefit plans should also review Rules R590-167, R590-176, R590-194, R590-200, R590-218, R590-233, R590-237, R590-247, R590-259, R590-261, R590-266, R590-271, and R590-220-10.

(2) ~~Determine~~A filer must determine if the group is an allowable group. An allowable group must meet the parameters of whether the group is an eligible group or a discretionary group. All groups, except a group formed under a Taft Hartley trust in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, must be formed and maintained for purposes other than obtaining insurance.

(a) Eligible Group.

(i) A filing for an eligible group must include a signed and fully completed Utah Accident and Health Insurance Group Questionnaire.

[+](A) A questionnaire must be completed for each eligible group under Sections 31A-22-503 through 507, and Subsection 31A-22-701(2).

[++](B) When a filing applies to multiple employee-employer groups under Section 31A-22-502, only one questionnaire is required to be completed.

(ii) A filing for an eligible Bona Fide Employer Association must include a signed and fully completed Utah Bona Fide Employer Association Group Questionnaire.

(b) Discretionary Group. If the group is not an eligible group, then specific discretionary group authorization must be obtained prior to filing.

(i) To obtain discretionary group authorization a Utah Accident and Health Insurance Request for Discretionary Group Authorization must be submitted and include all required information.

(ii) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(A) the existence of a verifiable group;

(B) that granting permission is not contrary to public policy;

(C) the proposed group would be actuarially sound;

(D) the group would result in economies of acquisition and administration which justify a group rate; and

(E) the group would not present hazards of adverse selection.

(iii) A discretionary group filing that does not provide authorization documentation will be rejected.

(iv) A change to an authorized discretionary group, such as change of name, trustee or domicile state, must be submitted to the department within 30 days of the change.

(v) Adding additional types of insurance products to be offered, requires that the discretionary group be reauthorized. The discretionary group authorization will specify the types of products that a discretionary group may offer.

(vi) The commissioner may periodically re-evaluate the group's authorization.

(vii) A filer may not submit a rate or form filing prior to receiving discretionary group authorization. If a rate or form filing is submitted without discretionary group authorization, the filing will be rejected.

(3) A filer submitting a long-term care filing, including a long-term care endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(4) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

#### **R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.**

This section contains instructions for health benefit plan filings subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act.

(1) A filer submitting health benefit plan filings that are subject to Title 31A, Chapter 30, is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organization and Limited Health Plans;

(b) Title 31A, Chapter 22, Parts 6 and 7;

(c) Title 31A, Chapter 30; and

(d) Rules R590-76, R590-131, R590-167, R590-176, R590-192, R590-194, R590-200, R590-203, R590-215, R590-218, R590-233, R590-247, R590-255, R590-259, R590-261, R590-262, [and] R590-263, R590-266, and R590-269.

(2)[(+)] Form Filing.

[+](a) A health benefit plan form filing must include in the Filing Description the SERFF tracking number for the form's applicable [x]-rate manual.

(b) Grandfathered and transitional plans must be filed separate from 2014 PPACA compliant health benefit plans.

(ii)(c) If the rate manual was previously filed, provide documentation indicating the department's receipt of the form filing's corresponding rate filing.

(b)(3) Rate Manual Filing for non-2014 PPACA Compliant Health Benefit Plans.

(i)(a) A rate manual that does not request a change in rating methodology is a File Before Use filing.

(ii)(b) A change in rating methodology filing is a File for Approval filing.

(iii)(c) A new and revised rate manual must:

(A)(i) include an actuarial certification signed by a qualified actuary;

(B)(ii) be filed 30 days prior to use;

(C)(iii) list the case characteristics and rate factors to be used;

(D)(iv) be applied in the same manner for all health benefit plans in a class;

(E)(v) contain specific area factor applicable in Utah;

(F)(vi) include the method of calculating the risk load, including the method used to determine any experience factors;

(G)(vii) include how the overall rate is reviewed for compliance with the rate restrictions;

(H)(viii) include detailed description of all classes of business, as provided in Section 31A-30-105;

(I)(ix) fully complete the Company Rate Information on the Rate/Rule Schedule tab; and

(J)(x) all information required by Section R590-167-6.

(4) Rate Filing for 2014 PPACA Compliant Health Benefit Plans.

(a) Rate filings shall be filed in accordance with the department's annual Bulletin to insurance carriers.

(b) Quarterly changes to a rate filing shall be filed in accordance with Bulletin 2015-3.

(c) Fully complete the Company rate information on the Rate/rule Schedule tab.

(5) Health Benefit Plan Reports.

(a) Actuarial Certification Report.

(i) All individual and small employer licensees who maintain a non-2014 PPACA compliant health benefit plan must file an actuarial certification as described in Sections 31A-30-106, 31A-30-106.1, and Subsection R590-167-11(1)(a).

(ii) The report is due April 1 each year.

(b) Small Employer Index Rates Report.

(i) All small employer licensees must file their index rates as of January 1 of the current year and preceding year, as required by Subsection 31A-29-117(2).

(ii) The report must include:

(A) the actual index rates; and

(B) calculate the percentage change in these rates between the two years.

(iii) The report is due February 1 each year.

(c) Each report must be filed separately and be properly identified.

(d)(i) [A] Except as provided in R590-220-10(4)(d)(ii), all health benefit plan reports must be filed with SERFF using a type of insurance of "H16I" or "H16G," and a filing type of "Report."

(ii) A Health Maintenance Organization must use "HOrg02I" or "HOrg02G" as the type of insurance and the filing type of "Report."

#### **R590-220-11. Additional Procedures for Medicare Supplement Filings.**

A filer submitting Medicare supplement filings is advised to review Section 31A-22-620 and Rule R590-146.

(1) A Medicare supplement form filing that affects rates must be filed with all required rating documentation.

(2)(a) A licensee must file its Medicare Supplement Buyers Guide.

(b) If previously filed, indicate the [filed date] Utah Filed Date or SERFF tracking number in the filing description.

(3) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Medicare supplement rates must comply with Section 31A-22-602, and Rules R590-146 and R590-85.

(d) A licensee shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(e) A rate revision request may not be used to satisfy the annual filing requirements of Subsection R590-146-14.C.

(4) Annual Medicare Supplement Reports.

(a) Medicare supplement reports are File and Use filings.

(b) Reports are due May 31 each year.

(c) Report of Multiple Policies.

(i) As required by Section R590-146-22, an issuer of Medicare supplement policies shall annually submit a report of multiple policies the licensee has issued to a single insured.

(ii) The report is required each year listing each insured with multiple policies or must state "NO MULTIPLE POLICIES WERE ISSUED."

(d) Annual Filing of Rates and Supporting Documentation.

(i) An issuer of Medicare supplement policies and certificates shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, in accordance with Subsection R590-146-14.C.

(ii) The NAIC Medicare Supplement Insurance Model Regulations Manual details what should be included in the annual rate filing.

(iii) Annual reports submitted with a request or any type of reference to a rate revision will be rejected.

(e) Refund Calculation and Benchmark Ratio. An issuer shall file the Medicare Supplement Refund Calculation Form and Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies reports according to Subsection R590-146-14.B.

(f) Reports for Pre-Standardized Medicare supplement benefit plans and 1990 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS06," and a filing type of "Report."

(g) Reports for 2010 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS09," and a filing type of "Report."

(h) If all Medicare supplement reports are not submitted together as one filing, the filing is considered incomplete and will be rejected.

**R590-220-12. Additional Procedures for Combination Policies or Endorsements and Riders Providing Life and Accident and Health Benefits.**

A filer submitting a health and life combination ~~[policies]~~ policy, or a health endorsement[s] or rider[s], to a life ~~[policies]~~ policy, is advised to review Rule R590-226.

(1) A combination filing is a policy, rider, or endorsement, which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are[-];

           (i) an endorsement or rider[-]; or

           (ii) an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Section and the Life Section of the Health and Life Insurance Division.

(2) A combination filing must be submitted separately to both the Health Section and Life Section of the Health and Life Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For an endorsement or rider, the filing must be submitted to the appropriate division based on benefits provided in the endorsement or rider.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) whole life policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

**R590-220-13. Additional Procedures for Long Term Care Products.**

(1) A filer submitting long-term care product filings is advised to review:

(a) Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards;

(b) Rule R590-148; and

(c) Section R590-220-12.

(2) A long-term care form filing that affects rates must be filed with all required rating documentation.

(3) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Long-term care rates must comply with Rules R590-148 and R590-85.

(d) A licensee shall not use or change premium rates for a long-term care policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(4) Annual Long-term Care Reports.

(a) All four long-term care reports required by Section R590-148-25 must be submitted together as one filing[-];

           (i) Replacement and Lapse Reporting Form;

           (ii) Claims Denial Reporting Form;

           (iii) Rescission Reporting Form; and

           (iv) Suitability Report Form.

(b) If all four reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

(c) If there is no information to report, the reporting form must state "NONE."

(d) Reports are due June 30 each year.

(e) The four reports shown below are required by Section R590-148-25[-];

(i) Replacement and Lapse Reporting Form.

(ii) Claims Denial Reporting Form.

(iii) Rescission Reporting Form.

(iv) Suitability Report Form.

(f) All long term care reports must be electronically filed with SERFF using a type of insurance of "LTC06," and a filing type of "Report."

**R590-220-14. Criteria for Adding or Terminating Participating Providers.**

(1) Criteria for adding or terminating participating providers must be submitted electronically via SERFF using a type of insurance of "H21" and a filing type of "Report."

(2) The Filing Description must state "Preferred Provider Agreement," as required by Subsection 31A-22-617.1(1)(c).

**R590-220-15. Correspondence and Status Checks.**

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) SERFF tracking number.

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

           (3) Binders.

           (a) Binder filings for 2014 PPACA compliant health benefit plans and certified stand-alone dental plans shall be in accordance with the department's annual Bulletin to insurance carriers.

**R590-220-16. ~~[Responses.]~~Classification of Documents.**

           (1) Except as provided in R590-167-12, the commissioner shall maintain as a protected record the records submitted under Sections 31A-30-106 and 31A-30-106.1.

           (2) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:

           (a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

           (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

           (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or

           (b) commercial information and non-individual financial information obtained from a person if:

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(3) The person submitting the information under Subsection (2)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Section 63G-2-309(1)(a)(i).

(a) The filer shall request which specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and

(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.

(4) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.

(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.

(c)(i) Despite the denial of classifying the information as protected, the commissioner shall treat the information as if it had been classified as protected until:

(A) the 30 day time limit for an appeal to the commissioner has expired; or

(B) the filer has exhausted all appeals available under Title 63G, Chapter 2, Part 4 and the document has been found to be a public document.

(ii) During the 30 day time limit to appeal or the appeal process, the filer may withdraw:

(A) the filing; or

(B) the request for designation as protected.

(d) If the filer combines in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

**R590-220-17. Responses.**

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter, a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) attach the documents in Subsections R590-220-[46]17(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive by mail or electronic mail a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

(3) Response to a Filing Rejection. A Filing Rejection is not considered filed with the department. A filer may choose to submit as a new filing. The new filing must reference the previously rejected filing.

**R590-220-[47]18. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-220-[48]19. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule on July 1, 2015 [~~15 days from the effective date of this rule~~].

**R590-220-[49]20. Severability.**

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: health insurance filings**

**Date of Enactment or Last Substantive Amendment:** [~~October 16, 2012~~]2015

**Notice of Continuation:** February 24, 2014

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-2-201.1; 31A-2-202; 31A-22-605; 31A-22-620; 31A-30-106

**Labor Commission, Boiler and Elevator  
Safety  
R616-3-3  
Safety Codes for Elevators**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39296

FILED: 04/22/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to adopt ICC/ANSI A117.1-2009 Chapters 407, 408, and 410 only and remove the International Building Code from the Division's list of adopted codes as it as adopted by the Department of Commerce and is enforced by building officials. This properly aligns the codes adopted and enforced by the Division with the Division's authority as outlined in Section R616-3-1.

**SUMMARY OF THE RULE OR CHANGE:** ANSI-A117.1(2009) Chapters 407, 408, and 410 need to be adopted. These chapters are the only ones that deal with elevators/escalators. This code is for Accessible and Usable Buildings and Facilities (ADA) requirements. International Building Code (2006) needs to be deleted from our rules. This code is used by the building officials and the Department of Commerce has the responsibility to adopt the building codes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A-1-101 et seq.

**MATERIALS INCORPORATED BY REFERENCES:**  
 ♦ Updates ICC/ANSI A117.1, published by American National Standards Institute, Inc., 2009  
 ♦ Removes 2006 International Building Code, published by ICC, 2006

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** ANSI-A117.1 is available to download online for free. ANSI-A117.1 (2009) Chapters 407, 408, and 410 address a small number of relatively minor changes which will not result in a net cost or savings to the state budget. There will be no cost associated with the removal of the International Building Code as it is adopted by the Department of Commerce.  
 ♦ **LOCAL GOVERNMENTS:** ANSI-A117.1 is available to download online for free. ANSI-A117.1 (2009) Chapters 407, 408, and 410 address a small number of relatively minor changes which will not result in a net cost or savings to the state budget. There will be no cost associated with the removal of the International Building Code as it is adopted by the Department of Commerce.  
 ♦ **SMALL BUSINESSES:** ANSI-A117.1 is available to download online for free. ANSI-A117.1 (2009) Chapters 407, 408, and 410 address a small number of relatively minor changes which will not result in a net cost or savings to the state budget. There will be no cost associated with the removal of the International Building Code as it is adopted by the Department of Commerce.  
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** ANSI-A117.1 is available to download online for free. ANSI-A117.1 (2009) Chapters 407, 408, and 410 address a small number of relatively minor changes which will not result in a net cost or savings to the state budget. There will be no cost associated with the removal of the International Building Code as it is adopted by the Department of Commerce.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Division is not aware of any additional cost that will be incurred by individuals, at the time of installation or during maintenance, due to the adoption and/or removal of these codes as they pertain to the Division's rules.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Commission is not aware of any additional cost that will

be incurred by individuals, at the time of installation or during maintenance, due to the adoption and/or removal of these codes as they pertain to the Division's rules.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 LABOR COMMISSION  
 BOILER AND ELEVATOR SAFETY  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov  
 ♦ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015**

**AUTHORIZED BY:** Sherrie Hayashi, Commissioner

**R616. Labor Commission, Boiler and Elevator Safety.  
 R616-3. Elevator Rules.  
 R616-3-3. Safety Codes for Elevators.**

The following safety codes are adopted and incorporated by reference within this rule:

- A. ASME A17.1-2013/CSA B44-10, Safety Code for Elevators and Escalators, and amended as follows:
  - 1. Delete 2.2.2.5;
  - 2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.
- B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler and Elevator Safety.
- C. ASME A90.1-2009, Safety Standard for Belt Manlifts.
- D. ANSI A10.4-2007, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.
- ~~E. 2006 International Building Code.~~
- [F]E. ICC/ANSI A117.1[+1998](2009) Accessible and Usable Buildings and Facilities, sections 407 and 408, and 410 approved [February 13, 1998] October 20, 2010.
- [G]E. ASME A18.1-2011 Safety Standard For Platform Lifts And Stairway Chairlifts.

[H]G. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

**KEY:** elevators, certification, safety

**Date of Enactment or Last Substantive Amendment:** [~~May 22, 2014~~2015]

**Notice of Continuation:** October 5, 2011

**Authorizing, and Implemented or Interpreted Law:** 34A-1-101 et seq.

**Natural Resources; Forestry, Fire and  
State Lands  
R652-70  
Sovereign Lands**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39314

FILED: 04/29/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1. The purpose of the rule change is due to new legislation (H. B. 140, 2015 General Session) and specifically amendments made to Sections 65A-2-6 and 65A-3-1.

**SUMMARY OF THE RULE OR CHANGE:** This rule change modifies provisions relating to activities on state lands surrounding Bear Lake and modifies the criminal provisions relating to the use of state lands. Amendments have been made regarding the requirements of the Division of Forestry, Fire and State Lands to issue a permit to a person to launch and retrieve a motorboat on state lands surrounding Bear Lake. The rule change also makes clarification regarding the sovereign land portion of Bear River.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 65A-2-6 and Section 65A-3-1

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The division will incur minimal costs for the processing and management requirements. However, no increased significant impact is likely.

◆ **LOCAL GOVERNMENTS:** This amendment will not result in direct, measurable costs or benefits to the local government as the amendment pertains to the requirement of a permit to launch and retrieve a motorboat.

◆ **SMALL BUSINESSES:** This amendment applies to those wanting to launch or retrieve a motorboat on lands surrounding Bear Lake and the requirement of a permit and a decontamination certificate. If the applicant is a small business they would need to purchase a permit to do so however no significant impact is likely.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Applicants will have to purchase a beach launching permit and comply with the Mussel Aware Boater Program and obtain a Decontamination Certificate.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Not to exceed \$25 for the beach launching permit.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Should have no fiscal impact.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

NATURAL RESOURCES  
FORESTRY, FIRE AND STATE LANDS  
1594 W NORTH TEMPLE STE 3520  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**THIS RULE MAY BECOME EFFECTIVE ON:** 06/22/2015

**AUTHORIZED BY:** Brian Cottam, Director

**R652. Natural Resources; Forestry, Fire and State Lands.**

**R652-70. Sovereign Lands.**

**R652-70-100. Authority.**

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, the Bear River from the Amalga Bridge to the

Great Salt lake, [and]the summer channel of the Bear River from the Utah-Idaho border to the Amalga Bridge, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams, or portions thereof, be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

#### **R652-70-200. Classification of Sovereign Lands.**

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

#### **R652-70-300. Categories of Leases, Permits, and Easements.**

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2) (c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property which is improved with, and used solely for a single-family dwelling.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

#### **R652-70-400. Lease and General Permit Provisions.**

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

#### **R652-70-500. Lease and General Permit Payments, and Audits.**

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

#### **R652-70-600. Lease Rates.**

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

#### **R652-70-700. Permit Rates.**

1. An application fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. A rental fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2) (c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

**R652-70-800. Applicant Qualifications.**

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

**R652-70-900. Applications.**

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

**R652-70-1000. Deficient Applications.**

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

**R652-70-1100. Additional Approvals.**

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or

federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

**R652-70-1200. Dredging and Filling Requires Approval.**

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

**R652-70-1300. Excavated or Dredged Channels, and Basins.**

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

**R652-70-1400. Approval Not Required to Repair Existing Facilities.**

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

**R652-70-1500. Docks, Piers, and Similar Structures.**

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

**R652-70-1600. Retaining Walls and Bulkheads.**

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

**R652-70-1700. Breakwaters and Jetties.**

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director determines that the proposed practice is consistent with public trust management.

**R652-70-1800. Overhead Clearance.**

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

**R652-70-1900. Camping and Motor Vehicles.**

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court.

**R652-70-2000. Existing Uses.**

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

**R652-70-2100. Authorization of Existing Uses.**

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.
2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

**R652-70-2200. Violations.**

The following acts or omissions shall subject a person to a civil penalty as provided in Section 65A-3-1(3):

1. A violation of the provisions of Section 65A-3-1(1-2);
2. A violation of any special order of the director applicable to the bed of a navigable water; or
3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

**R652-70-2300. Management of Bear Lake Sovereign Lands.**

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.6[8]5 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.6[8]5 feet above mean sea level.

(5) The established speed limit is [+5]10 miles per hour.

(6) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(7) No campfires or fireworks are allowed.

(8) The use and operation of motor vehicles on sovereign land at Bear Lake shall be governed by Utah Code 65A-3-1 and [~~the Bear Lake CMP~~]division plans.

(9) Pursuant to 65A-2-6(2), to obtain a permit to launch or retrieve a [~~vessel in an area adjacent to the landowner's property~~]motorboat on states lands surrounding [at]Bear Lake, [~~the adjacent landowner~~]a person shall:

[~~\_\_\_\_\_ (a) provide proof of being an adjacent landowner as defined in 65A-2-6(1).~~]

[~~(b)~~](a) [~~complete~~]Complete the online Mussel-Aware Boater Program and receive a multiple use Decontamination Certification Form valid through the end of the calendar year as required and provided by the Utah Division of Wildlife Resources as part of the Aquatic Invasive Species Program.

(10) [~~Each adjacent landowner surrounding Bear Lake~~]A person may only [~~be issued~~]purchase [~~two (2)~~]one (1) beach launching permit[s] annually.[~~They will not be replaced if lost or stolen.~~]

(a) The permit is valid for the calendar year within which the permit is issued.

[~~\_\_\_\_\_ (b) the permit is for the sole purpose of launching or retrieving a water vessel.~~]

[~~(c)~~](b) [~~the~~]The permit does not authorize launching or retrieving a motorboat or parking or operating a motor vehicle in an area designated as closed [~~in the Bear Lake Comprehensive Management Plan in violation of 65A-3-1(3)~~]to motorized use.

[~~\_\_\_\_\_ (c) Lost or stolen permits may be replaced at the established fee.~~]

(11) [~~†~~]The division may enter into an agreement with a local governmental entity or state agency to issue the beach launching permits [~~to adjacent landowners~~]in compliance with the requirements listed above.

(a) [~~†~~]The agreement will allow the entity or agency to establish a minimal administrative fee not to exceed \$25 for issuing the beach launching permit.

(12) The division or the entity or agency with an agreement to issue the beach launching permit may revoke a permit or deny an [~~adjacent landowner~~]applicant a permit to launch under the following circumstances:

(a) [~~†~~]The [~~adjacent landowner~~]applicant fails to comply with the beach launching permit requirements and stipulations listed above (R652-70-2300(9)(a-b) and R652-70-2300(10)(a-c))

(b) the [~~adjacent landowner~~]applicant fails to acquire a lease or permit for structures placed on sovereign lands that may include but is not limited to buoys, piers, docks (with the associated anchors/weights) or boat ramps as required in R652-70-300.

(13) Persons found in violation of 65A-3-1(1-3) [~~and 65A-3-1(2)~~]are subject to the criminal penalties set forth in 76-3-

204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

**R652-70-2400. Recreational Use of Navigable Rivers.**

1. Navigable rivers include the Bear River, Jordan River, and portions of the Green and Colorado rivers. On the Green River the navigable portions presently recognized as being owned by the state are generally described as from Dinosaur National Monument to the mouth of Sand Wash, and from the mouth of Desolation Canyon at Swazey's Rapid, also known as Twelve Mile Rapid, to the north boundary of Canyonlands National Park. On the Colorado River the navigable portions presently recognized as being owned by the state are generally described as from the mouth of Castle Creek to the east boundary of Canyonlands National Park and from the mouth of Cataract Canyon to the Arizona state line. Except as specified, this Section applies to recreational navigation on these waters.

2. Each group conducting an overnight float trip is required to possess and utilize a washable, reusable toilet system that allows for disposal of solid human body waste through an authorized sewage system.

3. All garbage, trash, human waste and pet waste must be carried off the river and disposed of properly.

4. For a float trip that takes place on the Colorado River between the mouth of Castle Creek and Potash, where toilet facilities and sewage and trash receptacles are available, these provided facilities may be used in lieu of reusable toilets and carrying out garbage, trash, and waste products.

5. The maximum group size for overnight river trips is limited to 25 persons. Two or more groups may not camp together if the resulting group size exceeds 25 persons at a campsite.

6. Each group on an overnight float trip is required to possess a durable metal fire pan at least 12 inches wide, with a lip of at least 1.5 inches around its outer edge, and to utilize this fire pan to contain campfires.

7. Only driftwood may be used as firewood. No cutting of firewood is allowed except in designated areas. Ashes and charcoal accumulated during a trip must be carried out and disposed of properly.

8. A right of entry permit from the division and a special recreation permit from the federal agency managing the land through which the river flows are required for commercial float trips.

9. For the Green River from Green River State Park to Canyonlands National Park, each noncommercial group floating the river shall have in the group's possession a valid interagency noncommercial river trip permit and shall abide by its terms. This permit will be issued free of charge by the Division, the Division of Parks and Recreation, the Bureau of Land Management, authorized outfitters and authorized private landowners. Subsection R652-70-2400(8) applies to commercial trips.

**KEY: sovereign lands, permits, administrative procedures**

**Date of Enactment or Last Substantive Amendment:**  
[September 23, 2014]2015

**Notice of Continuation: April 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 65A-10-1**

**School and Institutional Trust Lands,  
Administration  
R850-150  
Rare Plant Species**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 39309

FILED: 04/27/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to implement board policy for managing trust land plant species habitat for plants that are already listed, or at risk of being listed, as threatened or endangered under the federal Endangered Species Act.

**SUMMARY OF THE RULE OR CHANGE:** The rule defines "Conservation Agreement" as being the Conservation Agreement and Strategy for Graham's Beardtongue and White River Beardtongue, dated 07/22/2014. It also defines "Conservation Area" as any trust lands located within the conservation area described in Appendices A and B of the conservation agreement. The rule further restricts surface disturbance within conservation areas without prior agency approval.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53C-2-202

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There potentially may be a slight increase in cost to the state as a result of the need to more closely manage conservation areas and monitor any activities that might cause surface disturbance within those areas.

◆ **LOCAL GOVERNMENTS:** There should not be any costs or savings to local governments as a result of this rule. If the local government were the lessee of trust lands within a conservation area, they would need to plan ahead to avoid disturbing the surface within the designated area.

◆ **SMALL BUSINESSES:** There should not be any costs or savings to small businesses as a result of this rule. If the small business was the lessee of trust lands within a conservation area, it would need to plan ahead to avoid disturbing the surface within the designated area.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There should not be any costs or savings to persons other than small businesses, businesses, or local government entities as a result of this rule. If the person was the lessee of trust lands within a conservation area, they would need to plan ahead to avoid disturbing the surface within the designated area.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any compliance costs as a result of this rule. If an entity was interested in leasing trust land within a conservation area, they would need to plan ahead to avoid disturbing the surface within the designated area.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since any impacted businesses are already participants in the conservation agreement, no additional impact is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
SCHOOL AND INSTITUTIONAL TRUST LANDS  
ADMINISTRATION  
ROOM 500  
675 E 500 S  
SALT LAKE CITY, UT 84102-2818  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015

AUTHORIZED BY: Kevin Carter, Director

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**R850. School and Institutional Trust Lands, Administration.**

**R850-150. Rare Plant Species.**

**R850-150-100. Authorities.**

The activities of the School and Institutional Trust Lands Administration are authorized by Sections 6, 7, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and the Utah Trust Lands Management Act, Section 53C-1-101 et seq. This rule is specifically authorized by Section 53C-2-202 which authorizes the director to make determinations with respect to the management, protection, and conservation of plant species located on trust lands which are listed under the federal Endangered Species Act.

**R850-150-200. Definitions.**

For purposes of this rule:

1. "Conservation Agreement" means that certain Conservation Agreement and Strategy for Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*P. scariousus* var. *albifluensis*) dated July 22, 2014.

2. "Conservation Area" means any trust lands contained within a Conservation Area described in Appendices A and B of the Conservation Agreement.

**R850-150-300. Restriction on Surface Disturbance within Conservation Areas.**

1. Lessees or permittees of trust lands located within Conservation Areas may not undertake surface disturbance of trust lands without prior written permission of the agency.

2. Agency determinations with respect to requests to undertake surface disturbance within Conservation Areas will be governed by the terms of the Conservation Agreement.

3. Unauthorized surface disturbance of trust lands within Conservation Areas will be considered a trespass as provided in Section 53C-2-301.

**KEY: plants, conservation, endangered species**

**Date of Enactment or Last Substantive Amendment: June 22, 2015**

**Authorizing, and Implemented or Interpreted Law: 53C-2-202**

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## Transportation, Preconstruction R930-8 Utility Relocations Required by Highway Projects

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39297

FILED: 04/23/2015

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule replaces Section R930-7-12. It is a rule that better facilitates accomplishment of the Department's strategic goals.

SUMMARY OF THE RULE OR CHANGE: This new rule sets forth the Department's requirements and authority as to a utility company's coordination and cooperation when removal, relocation, or alteration of a utility facility is made necessary by a highway project; it sets forth options the Department may pursue to proceed with a highway project in the event that a utility company fails to cooperate or coordinate with the Department as required by statute or rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 54-3-29(5)(b) and Subsection 54-3-29(6) and Subsection 54-3-29(7) and Subsection 72-6-116(2) and Subsection 72-6-116(6)

MATERIALS INCORPORATED BY REFERENCES:

♦ Adds 23 CFR Section 645, subpart A, published by Government Printing Office, 05/15/1985

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This new rule will help the Department to reduce the amount of time lost on highway construction projects due to inefficient utility facility relocation.

It provides a framework for utility companies, the Department and the Department's contractors to follow when it becomes necessary to relocate a utility facility to facilitate a highway construction project, and it defines how the Department and the utility companies must cooperate and coordinate their efforts to minimize wasted time and effort. The Department anticipates that minimizing time lost due to utility relocation disputes will equate to cost savings for the state budget.

◆ **LOCAL GOVERNMENTS:** Inefficient highway construction practices adversely affect all of a project's stakeholders. The Department anticipates that reducing time lost due to utility relocation disputes will result in cost savings for local governments for the same reasons it will result in saving to the state's budget.

◆ **SMALL BUSINESSES:** Highway construction that impedes access to small businesses costs those businesses customers and eats away at their revenue. The Department anticipates that this rule will reduce the time needed to complete highway construction projects and minimize revenue losses experienced by small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Highway construction projects that impede travel for everyone represent a cost to everyone. They can result in greater time needed to get to or from work, school, recreation facilities. This rule will reduce the time needed to complete highway construction projects and reduce resulting lost time for everyone.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This new rule should not result in additional compliance costs for affected persons such as the utility companies. It does not eliminate any substantive or procedural right. This new rule only eliminates gaps in the old rule that are known to have led to lost time.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Faster and more efficient highway construction practices benefit everyone who uses the state's transportation system. The Department intends that this new rule will lead to faster and more efficient construction practices, which will have a positive fiscal impact on all the state's businesses, local governments, and on the state as a whole.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TRANSPORTATION  
PRECONSTRUCTION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

**R930. Transportation, Preconstruction.**

**R930-8. Utility Relocations Required by Highway Projects.**

**R930-8-1. Purpose.**

This Rule sets forth the Department's requirements and authority as to a Utility Company's coordination and cooperation when removal, relocation, or alteration of a Utility Facility is made necessary by a highway project and sets forth the options the Department may pursue to proceed with a highway project in the event that a Utility Company fails to cooperate or coordinate with the Department as required by statute or rule.

**R930-8-2. Authority.**

This Rule is enacted pursuant to Utah Code Sections 54-3-29(5)(b), (6), and (7), and 72-6-116(2) and (6).

**R930-8-3. Definitions.**

As used in this Rule R930-8:

(1) "Department" means the Utah Department of Transportation.

(2) "Non-operating Property" and "Non-operating Real Property" refer to property owned by a Utility Company that is not directly part of the Utility Company's physical plant or facilities that provide the utility service.

(3) "Utility Company" and "Utility" shall have the same definition as in Utah Code Section 54-3-29(1)(f), and may be used interchangeably.

(4) "Utility Facility" shall have the same definition as in Utah Code Section 54-3-29(1)(g).

**R930-8-4. Utility Company Coordination and Cooperation.**

When the Department notifies a Utility that relocation of a Utility Facility may be necessary due to a highway project, both the Department and the Utility shall use their best efforts to identify conflicts, minimize utility relocation costs and operational impacts, highway project costs and delays, and to coordinate and cooperate with one another, as directed in Utah Code Sections 54-3-29(6)-(7) and 72-6-116(6). When the Department believes a conflict exists, it will offer an initial scoping meeting and provide authorization for the Utility to do preliminary design work. The Utility shall:

(1) Provide to the Department, the location of each Utility Facility likely to be affected following the process set forth in Rule R930-7-11(6).

(2) Identify to the Department conflicts between the Department's proposed highway work and the Utility's operation of its Utility Facilities.

(3) Submit to the Department all conveyances, vesting documents, or other evidence of title to real property related to the potential relocation of Utility Facilities as early as practicable.

(4) Submit to the Department the Utility's proposed design for relocation; detailed cost estimates; a reasonable relocation schedule to accommodate the highway project; reasonable limits on highway project work, including utility outage windows and construction loadings by the Department; and communication procedures between the parties. A reasonable relocation schedule for the project includes, but is not limited to, work sequencing, task durations, material ordering, notification requirements, mobilization, third-party coordination, communication between the parties, and any other activity necessary for the relocation of the Utility Facility to accommodate the highway project. If the relocation work is to be completed prior to the Department awarding the highway project to its contractor, the Utility shall include specific dates in the schedule.

(5) Execute a written relocation agreement with the Department. The agreement shall include terms and conditions, including but not limited to, the relocation scope of work, reimbursement provisions, federal requirements, description and location of the work to be undertaken, plans and drawings, and detailed cost estimates.

(6) After the Department has awarded the highway project to the contractor, coordinate with the contractor to develop a detailed work plan and schedule, and address all other matters of mutual concern during construction. Submit to the Department written acknowledgement of the approved schedule.

(7) Perform the work necessary for removal, relocation, or alteration of the Utility Facility in accordance with the detailed work plan and schedule developed in (4) and (6) above, and as described in the relocation agreement and supplemental agreements.

#### **R930-8-5. Timeliness.**

The work listed in Subsections R930-8-4(1) through (7) must be timely completed by the Utility as not to delay the highway project or otherwise increase costs to the project. The Department will provide reasonable deadlines for the Utility so the Utility can meet the deadlines and not unnecessarily delay the highway project. The Department will also provide the Utility with reasonable updates of highway project schedule changes.

#### **R930-8-6. Relocation.**

The basic concept when relocating Utility Facilities is to functionally restore the Utility's operation facilities that existed prior to the Department constructing a highway project.

(1) The Department incorporates by reference 23 CFR Section 645, subpart A (05/15/1985), for all Utility Facility relocations required by the Department's highway projects. For deviations in determining whether the Utility's real property needed for the highway project should be handled as a utility relocation or right-of-way acquisition, Rule R930-7-13(5) shall apply.

(2) If the Utility's regulatory and construction requirements can be met, the Department may require Utility Companies to jointly occupy conduits or trenches for the highway construction projects. The Department will not require one Utility to jointly occupy another Utility's conduit. To the extent Utilities have valid agreements concerning the joint use of above ground facilities, the Utilities shall cooperate with each other for the relocated joint use.

(3) If a Utility determines the existing Utility Facilities do not need to be replaced or are not needed to maintain its operational

facilities, payment for the real property, which is needed to accommodate the construction of the highway project where the Utility Facilities are located, shall be handled as a right-of-way acquisition.

#### **R930-8-7. Replacement of Property Rights.**

(1) When the Department replaces a Utility's fee interest or easement, the Utility shall transfer title to the prior fee or easement to the Department without charge.

(2) If the Utility has facilities within a fee or easement and the facilities are relocated within the Department's right-of-way, the Utility shall transfer title to the fee or easement without charge to the Department and the Department shall reimburse the Utility 100% of the future utility relocation costs in compliance with 23 CFR Section 645, subpart A.

(3) When the Utility's Utility Facilities are located in a public utility easement as defined in Utah Code Section 54-3-27, the Department may purchase a replacement public utility easement and may require the Utility to relocate its facilities to the replacement public utility easement.

(4) The Department may acquire a public utility easement as defined in Utah Code Section 54-3-27, and may require the Utility to relocate its facilities to the public utility easement from the Department's right-of-way. In this situation, the Utility shall sign an agreement that any reimbursement for future utility relocations shall be 50% unless the Utility pays for the public utility easement. Utilities that are political subdivisions of the State shall be exempt from the requirement to sign such agreements.

(5) If the Department obtains a court ordered occupancy or right-of-entry from a property owner, the Utility shall relocate its facilities onto the replacement property rights while the Department obtains the final order or deeds from the property owner.

(6) Acquisition of Non-operating Real Property from a Utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable right-of-way procedures in 23 CFR Section 710.203.

#### **R930-8-8. Reimbursement of Relocation Costs.**

(1) Reimbursement costs shall be determined in accordance with 23 CFR Section 645, subpart A, and the Program Guide, Utility Relocation and Accommodation on Federal-Aid Highway Projects, Sixth Edition, January 2003, as amended, Cost Development and Reimbursement, pages B-21 to B-23.

(2) If a Utility cannot provide a copy of a permit that shows the Department's acceptance of the deviation from the rule in effect at the time of installation of the utility facilities and the utility facilities do not meet the overhead clearance requirements, the Utility must relocate its facilities without any reimbursement from the Department. The Utility shall be responsible for 100% of its relocation costs for non-compliant utility facilities.

(3) When reimbursement is made on the basis of actual costs, the Utility's estimate and final billing shall be itemized to show the totals for labor, overhead construction costs, travel expenses, transportation, equipment, materials and supplies, handling costs, and other services.

(4) The Utility's final billing statement shall be provided in a format that facilitates making comparisons with the Department's approved estimates.

(5) A Utility must submit final billings to the Department within six months following the completion of the Utility Facility relocation work. The Department may make a final payment when the final bill is received from a Utility more than six months after the completion of the Utility Facility relocation work if the Department and the Utility have agreed in advance that a longer time period is needed.

(6) The costs incurred by the Department and a Utility for compliance with federal and state statutes, rules, and regulations will be included as part of the utility relocation costs.

(7) Temporary Utility Facility relocations required by the highway project will be included as part of the utility relocation costs.

(8) Telecommunication utility companies granted longitudinal interstate access are required to pay all relocation costs pursuant to Utah Code Section 72-7-108.

**R930-8-9. Betterments.**

No betterment credit is required for the replacement of utility devices or materials that are:

(1) Required by the highway project;

(2) Of equivalent standards although not identical;

(3) Of the next highest grade or size when the existing devices or materials are no longer regularly manufactured;

(4) Required by law pursuant to governmental and appropriate regulatory commission code; or

(5) Required by current design practices regularly followed by the Utility in its own work, and there is a resulting direct benefit to the highway project.

**R930-8-10. Issuance of Administrative Order; Enforcement.**

(1) In the event that a Utility fails to timely coordinate and cooperate with the Department at any point in the utility relocation process, the Department may issue an administrative order pursuant to Utah Code Section 72-6-116(2)(b) to the Utility to accommodate the highway project. The administrative order shall be issued by the Department's Statewide Utilities and Railroads Engineer and will include a reasonable timeframe for Utility Company actions to be complete. Failure to comply with Department's administrative order may result in the Department issuing an administrative order to remedy non-compliance. The Department may order any or all of the following remedies:

(a) The Department may recover from the Utility increased costs caused by the Utility's unreasonable or unjustified delays. Such costs may include, but are not limited to, increased costs on the current highway project or related projects, added expenses from loss of a construction season, and loss of project funding.

(b) The Department may deny further permits for utility installation under R930-7 until the Utility's non-compliance is resolved.

(c) The Department may perform design work and construction work on behalf of the Utility for those Utility Facilities located within the highway right-of-way. The Utility shall reimburse the Department for the costs the Department incurs to relocate the Utility's facilities, in the amounts allowed by Utah Code Section 72-6-116(3).

(2) In addition, the Department may pursue additional remedies or claims against a Utility in the Utah Third District Court.

(3) The Department shall not limit or waive any of its remedies or claims allowed in this rule or law.

(4) The Department may require a Utility to comply with a practicable shortened process or expedited schedule when an emergency exists that could affect public safety or the structural or functional integrity of the highway.

**R930-8-11. Agency review.**

A Utility aggrieved by an administrative order issued under Rule R930-8-10 and Utah Code Section 72-6-116(2)(b) may file a written request for agency review with the Department pursuant to the Administrative Procedures Act, Utah Code Title 63G, Chapter 4, and Rule R907-1. The presiding officer for the agency review will be the Department's Director of Operations, who will issue the Department's Final Order. The administrative proceedings shall be informal.

**KEY: right-of-way, utility accommodation, utility facilities, utilities**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 54-3-29(5)(b); 54-3-29(6); 54-3-29(7); 72-6-116(2); 72-6-116(6)**

**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends June 15, 2015.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (*example*). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through September 12, 2015, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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**The Changes in Proposed Rules Begin on the Following Page**

**Insurance, Administration**  
**R590-271**  
**Data Reporting for Consumer Quality Comparison**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 39103

FILED: 04/24/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this filing is to update the Utah Health Information Network (UHIN) standards version and incorporate the Department of Health's Healthcare Effectiveness Data and Information Set (HEDIS) reporting requirements for insurers.

**SUMMARY OF THE RULE OR CHANGE:** The change updates the version number of two UHIN standards that are incorporated by reference, and incorporates the Department of Health's HEDIS reporting requirements for insurers. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the February 15, 2015, issue of the Utah State Bulletin, on page 19. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-2-216 and Section 31A-22-613.5

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Transparency Denial Standards, published by Utah Health Information Network, 06/06/2015
- ◆ Updates Transparency Administration Performance Standard, published by Utah Health Information Network, 06/06/2015

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Budget neutral--No new information is required by the change. Cost information can be found in the original rule filing.
- ◆ **LOCAL GOVERNMENTS:** Budget neutral--No new information is required by the change. Cost information can be found in the original rule filing.
- ◆ **SMALL BUSINESSES:** Budget neutral--No new information is required by the change. Cost information can be found in the original rule filing.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Budget neutral--No new information is required by the change. Cost information can be found in the original rule filing.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no additional costs as a result of this rule change. Cost information can be found in the original rule filing.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change will have no fiscal impact on any entity. The change is merely clerical in nature.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/15/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2015**

**AUTHORIZED BY:** Todd Kiser, Commissioner

**R590. Insurance, Administration.**

**R590-271. Data Reporting for Consumer Quality Comparison.**

**R590-271-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-216 and 31A-22-613.5 wherein the commissioner is directed to educate consumers and to adopt a rule for purposes of reporting transparency information.

**R590-271-2. Purpose and Scope.**

- (1) The purpose of this rule is to:
  - (a) define terms;
  - (b) define the methodology for determining and comparing insurer transparency information;
  - (c) provide the data and format for submission to the commissioner; and
  - (d) provide the date the information is due.
- (2)(a) This rule applies to all health benefit plans issued or renewed on or after January 1, 2015.

(b) This rule does not apply to an insurer whose health benefit plans cover fewer than 3,000 individual Utah residents.

**R590-271-3. Definitions.**

In addition to the definitions in Sections 31A-1-301, the following definitions shall apply for the purpose of this rule:

- (1) "Electronic Data Interchange Standard" means the:
  - (a) the standards developed by the UHIN Standards Committee at the request of the commissioner; and
  - (b) others as adopted by the commissioner by rule.
- (2) "SFTP" means the Secure File Transfer Protocol.
- (3) "UHIN" means the Utah Health Information Network.
- (4) "UHIN Standards Committee" means the Standards Committee of the UHIN.

**R590-271-4. Reporting Requirements.**

(1)(a) The commissioner has convened a group, as identified in 31A-22-613.5(4)(a), to develop information for consumers to compare health insurers and health benefit plans. As a result of the group's work, the commissioner adopts the following UHIN electronic data interchange standards developed and adopted by the UHIN Standards Committee, which are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours, at [www.insurance.utah.gov](http://www.insurance.utah.gov), or at [www.uhin.org](http://www.uhin.org):

~~(a)~~(i) the Transparency Administration Performance Standard, version 1.2; and

~~(b)~~(ii) the Transparency Denial Standards, version 1. ~~2~~.

~~(2)(a)~~(b)(i) Beginning on April 1, 2016, and each year thereafter, an insurer shall submit the reports referenced in R590-271-4(1)(a)

~~(ii)~~ to UHIN in an electronic data interchange standard which includes data for the previous calendar year.

~~(b)~~(c) Each report shall include data for both paper and electronic claims combined.

~~(3)~~(d) Submission format, procedures and guidelines are described in detail in the adopted transparency standards published by UHIN.

(2) Beginning on July 1, 2016, and each year thereafter, an insurer shall comply with the reporting guidelines, procedures and format of R428-13 and submit to the Utah Department of Health Office of Health Care Statistics, the Healthcare Effectiveness Data and Information Set, HEDIS, data for the preceding calendar year.

**R590-271-5. Records.**

The commissioner finds the data submitted to the commissioner in the Transparency Administration Performance Standard and the Transparency Denial Standards to be considered a public record as defined in Section 63G-2-103 for the purpose of display on:

- (1) the Health Insurance Exchange as described in Section 63M-1-2505, [avenueh.com](http://avenueh.com);
- (2) the department's website, [insurance.utah.gov](http://insurance.utah.gov); and
- (3) the department's transparency website, [healthrates.utah.gov](http://healthrates.utah.gov).

**R590-271-6. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-271-7. Enforcement Date.**

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

**R590-271-8. Severability.**

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

**KEY: data, data reporting, insurance**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 31A-2-216; 31A-22-613.5**

**End of the Notices of Changes in Proposed Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Commerce, Occupational and Professional Licensing **R156-20a** Environmental Health Scientist Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39306  
FILED: 04/27/2015

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 20a, provides for the licensure of environmental health scientists and environmental health scientists-in-training. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-20a-201 (3) provides that the Environmental Health Scientist Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 20a, with respect to environmental health scientists and environmental health scientists-in-training.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in July 2010, the rule has been amended two times. The

Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 20a, with respect to environmental health scientists and environmental health scientists-in-training. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Maria Skedros (Lohse) by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at [mstedros@utah.gov](mailto:mstedros@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 04/27/2015

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**Commerce, Occupational and  
Professional Licensing  
R156-83**

**Online Prescribing, Dispensing, and  
Facilitation Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39298  
FILED: 04/23/2015

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 83, provides for the licensure of online prescribers, online contract pharmacies and online Internet facilitators. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-83-201(4)(a) provides that the Online Prescribing, Dispensing, and Facilitation Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 83, with respect to online prescribers, online contract pharmacies, and online Internet facilitators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the rule was originally enacted in July 2010, the rule has been amended four times. The Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 83, with respect to online prescribers, online contract pharmacy and online Internet facilitator. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
COMMERCE  
OCCUPATIONAL AND PROFESSIONAL

LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at aprilellis@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 04/23/2015

**Commerce, Real Estate  
R162-2e  
Appraisal Management Company  
Administrative Rules**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39291  
FILED: 04/17/2015

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule was adopted under the statutory provisions of Title 61, Chapter 2e, primarily as a renumbering and reorganizing of the previously adopted rule. Section 61-2e-103 provides that the Real Estate Appraiser Licensing and Appraiser Board, with the concurrence of the Utah Real Estate Division, may make rules that are consistent with Chapter 2e and necessary to implement Chapter 2e. Other sections which authorize the rulemaking process are Sections 61-2e-102, 61-2e-203, 61-2e-204, 61-2e-304, 61-2e-305, 61-2e-401, and 61-2e-402. Changes and updates to the rule were included in response to questions from the industry. The rule helps to guide appraisal management companies (AMCs) to satisfy the statutory requirements of registration, recordkeeping, disclosures bonds, and other statutory requirements. In addition, the rule ensures that AMCs use licensed or certified appraisers and outlines specific information required to be provided to an appraiser at the time the assignment is offered.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2011, the division received one public comment on a proposed rule amendment which would require disclosure by an AMC of any charges of costs or fees

to an appraiser at the time the assignment is offered and such costs or fees could not be inflated above the actual cost of a service provided by a third party and could not be charged for a service not actually performed. The commenter suggested that the amendment should be changed to distinguish general fees from transactional fees. In response to an amendment filed 07/09/2012, which would require that AMCs obtain a \$25,000 surety bond, the division received 11 public comments, six in favor of the amendment, two against, two that thought the bond amount should be higher, and one neutral comment. In response to an amendment filed 03/06/2012, which would clarify the administrative procedures for adjudicating a matter involving an AMC, the division received one public comment recommending changes to the proposed amendment including a requirement of a formal adjudicative proceeding in certain circumstances. In response to a proposed amendment filed 05/31/2013, the division received four comments on a proposed rule amendment which would clarify the unprofessional conduct provision relative to the use of an employee to complete an appraisal assignment. All of the comments expressed concern about the effective of the proposed rule amendment or were opposed to the proposed amendment.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** The statutory requirements found in Title 61, Chapter 2e, remain in effect or have been updated at the time of this five-year review. The rulemaking authority from the statute continues in effect as does the need for rules to implement the statute. Therefore, the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
REAL ESTATE  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at [justinbarney@utah.gov](mailto:justinbarney@utah.gov)

AUTHORIZED BY: Jonathan Stewart, Director

EFFECTIVE: 04/17/2015

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**Commerce, Real Estate**  
**R162-57a**  
**Timeshare and Camp Resort Rules**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 39292  
FILED: 04/21/2015

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE:** The rule was adopted under the statutory provisions of Title 57, Chapter 19, the Timeshare and Camp Resort Act. Section 57-19-3 provides that the director of the Division of Real Estate may make, amend, and repeal rules when necessary to carry out the provisions of Chapter 19. Other sections in Chapter 19 which authorize the rulemaking process are Sections 57-19-5, 57-19-13, 57-19-15, 57-19-16, 57-19-17, 57-19-18, 57-19-20, 57-19-23, and 57-19-26.

**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** No public comments were received during the public comment period after filing of the proposed rule and several amendments. However, the proposed rule and its amendments were discussed with industry representatives and their comments were considered during the drafting and adopting of the rule and its amendments.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** There have been no comments either in favor or in opposition to this rule. The statutory authorization in Section 57-19-3 remains in effect and the rule continues to be necessary to protect the interests of purchasers of timeshare and camp resort units and the public. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
REAL ESTATE  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at [justinbarney@utah.gov](mailto:justinbarney@utah.gov)

AUTHORIZED BY: Jonathan Stewart, Director

EFFECTIVE: 04/21/2015

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Education, Administration

**R277-114**

Corrective Action and Withdrawal or  
Reduction of Program Funds

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 39335  
FILED: 05/01/2015

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides necessary procedures for public education programs monitoring and corrective action for noncompliance with identified program requirements, program accountability standards, and financial propriety. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 05/01/2015

Education, Administration

**R277-459**

Classroom Supplies Appropriation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 39336  
FILED: 05/01/2015

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(b) directs the Utah State Board of Education to establish rules and minimum standards for school programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides procedures for distributing money through local education agencies to classroom teachers for school materials and supplies. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 05/01/2015

Education, Administration  
**R277-474**  
School Instruction and Human  
Sexuality

Education, Administration  
**R277-475**  
Patriotic, Civic and Character  
Education

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39337  
FILED: 05/01/2015

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39338  
FILED: 05/01/2015

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-13-101(1)(c)(ii) (B) directs the Utah State Board of Education (Board) to develop a rule to allow local boards of education to adopt human sexuality education materials or programs under Board rules, and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-13-101.6 directs the Utah State Board of Education (Board) to provide a rule for a program of instruction within the public schools relating to the flag of the United States, and by Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides requirements for selection, instruction, and notice to parents of human sexuality and maturation instructional materials. Therefore, this rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides direction for patriotic education programs in the public schools as required by state law. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Division of Administrative Rules.

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 05/01/2015

EFFECTIVE: 05/01/2015

Human Services, Administration  
**R495-808**

Fatality Review Act

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 39326  
 FILED: 04/30/2015

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-16-101 through 62A-16-302 set forth the legal criteria and requirements for Department of Human Services fatality reviews. The Department of Human Services is authorized to adopt or amend rules in Section 62A-1-111.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments during the five-year period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should remain in place to ensure fatality rules continue and the procedure for reviewing and reporting of fatalities are clear. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES  
 ADMINISTRATION  
 DHS ADMINISTRATIVE OFFICE  
 MULTI STATE OFFICE BUILDING

195 N 1950 W  
 SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Janell Hall by phone at 801-538-4143, by FAX at 801-538-4317, or by Internet E-mail at [janellhall@utah.gov](mailto:janellhall@utah.gov)  
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhjonesrobbins@utah.gov](mailto:jhjonesrobbins@utah.gov)

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 04/30/2015

Insurance, Administration  
**R590-231**

Workers' Compensation Market of Last  
 Resort

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 39313  
 FILED: 04/29/2015

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-19a-404 provides rulemaking authority for the recording and reporting of statistical data and experience rating data. Section 31A-20-103 provides authority to define lines and classes of insurance. Section 31A-22-1010 sets reporting requirements for workers' compensation deductible policies. Section 31A-2-201 provides general rulemaking authority to implement the provision of Title 31A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides a definition of "Market of Last Resort" and provides eligibility criteria for employers. The definition is required to monitor assignment to the market of last resort.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 04/29/2015

**Public Service Commission,  
Administration  
R746-312  
Electrical Interconnection**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 39311  
FILED: 04/29/2015

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-4-14 authorizes the Public Service Commission (PSC) to make rules that require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises that promote and safeguard the health and safety of its employees, customers, and the public, and the installation, use, maintenance, and operation of appropriate safety or other devices or appliances and to establish standards of construction and equipment, and to require the performance of any other acts which the health or safety of its employees, customers, or the public may demand. Section 54-4-7 requires the PSC to determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation. In Section 54-12-2, The PSC shall establish reasonable rates, terms, and conditions for the purchase or sale of electricity or electrical generating capacity, or both, between a purchasing utility and a qualifying power producer. In Section 54-15-106, after appropriate notice and opportunity for public comment, the governing authority may by rule adopt additional

reasonable safety, power quality, and interconnection requirements for customer generation systems that the governing authority considers to be necessary to protect public safety and system reliability.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was proposed and made effective on 04/30/2010. No comments were received in the five years after the effective date.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule implements standards for interconnection of electrical generating facilities to public utilities under the jurisdiction of the PSC. The continuation of this rule is necessary to allow the commission to carry out its statutory mandate under the above cited statutes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jordan White by phone at 801-530-6712, or by Internet E-mail at [jordanwhite@utah.gov](mailto:jordanwhite@utah.gov)
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: Jordan White, Legal Counsel

EFFECTIVE: 04/29/2015

**End of the Five-Year Notices of Review and Statements of Continuation Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal & Reenact  
REP = Repeal

### Administrative Services

#### Finance

No. 39160 (AMD): R25-25-7. Travel-Related Reimbursements for State Employees  
Published: 03/15/2015  
Effective: 04/21/2015

### Agriculture and Food

#### Plant Industry

No. 39148 (NEW): R68-22. Industrial Hemp Research  
Published: 03/15/2015  
Effective: 04/22/2015

### Alcoholic Beverage Control

#### Administration

No. 39156 (AMD): R81-1-3. General Policies  
Published: 03/15/2015  
Effective: 04/28/2015

No. 39158 (AMD): R81-1-6. Violation Schedule

Published: 03/15/2015  
Effective: 04/28/2015

No. 39154 (AMD): R81-2-1. Special Orders of Liquor by Public

Published: 03/15/2015  
Effective: 04/28/2015

No. 39155 (AMD): R81-3-5. Special Orders of Liquor by Public

Published: 03/15/2015  
Effective: 04/28/2015

### Commerce

#### Occupational and Professional Licensing

No. 38915 (AMD): R156-47b. Massage Therapy Practice Act Rule

Published: 11/15/2014  
Effective: 04/21/2015

No. 38915 (CPR): R156-47b. Massage Therapy Practice Act Rule

Published: 03/15/2015  
Effective: 04/21/2015

No. 39151 (AMD): R156-71-202. Naturopathic Physician Formulary

Published: 03/15/2015  
Effective: 04/21/2015

### Environmental Quality

#### Water Quality

No. 39105 (AMD): R317-10-8. Utah Wastewater Operator Certification Council

Published: 02/15/2015  
Effective: 04/29/2015

### Health

#### Child Care Center Licensing Committee

No. 39130 (NEW): R381-60. Hourly Child Care Centers

Published: 03/01/2015

Effective: 05/01/2015

No. 39129 (NEW): R381-70. Out of School Time Programs

Published: 03/01/2015  
Effective: 05/01/2015

No. 39128 (NEW): R381-100. Child Care Centers

Published: 03/01/2015  
Effective: 05/01/2015

NOTICES OF RULE EFFECTIVE DATES

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Disease Control and Prevention, Environmental Services  
No. 39161 (NEW): R392-600. Illegal Drug Operations  
Decontamination Standards  
Published: 03/15/2015  
Effective: 05/01/2015

Family Health and Preparedness, Children with Special  
Health Care Needs  
No. 39133 (NEW): R398-30. Children's Organ Transplants  
Published: 03/01/2015  
Effective: 04/20/2015

Health Care Financing, Coverage and Reimbursement Policy  
No. 39134 (REP): R414-10B. Children's Organ Transplants  
Published: 03/01/2015  
Effective: 04/20/2015

Family Health and Preparedness, Child Care Licensing  
No. 39127 (REP): R430-60. Hourly Child Care Centers  
Published: 03/01/2015  
Effective: 05/01/2015

No. 39126 (REP): R430-70. Out of School Time Child Care  
Programs  
Published: 03/01/2015  
Effective: 05/01/2015

No. 39125 (REP): R430-100. Child Care Centers  
Published: 03/01/2015  
Effective: 05/01/2015

Regents (Board Of)

Administration  
No. 39010 (NEW): R765-571. Delegation of Purchasing  
Authority  
Published: 01/01/2015  
Effective: 04/28/2015

Transportation

Operations, Maintenance  
No. 39150 (AMD): R918-7. Highway Sponsorship Programs  
Published: 03/15/2015  
Effective: 04/23/2015

Workforce Services

Employment Development  
No. 39098 (AMD): R986-700. Child Care Assistance  
Published: 02/15/2015  
Effective: 05/01/2015

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2015 through May 01, 2015. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	39033	R&R	03/03/2015	2015-2/4
R23-2	Procurement of Architect-Engineer Services	39061	REP	03/16/2015	2015-3/4
<u>Finance</u>					
R25-25-7	Travel-Related Reimbursements for State Employees	39160	AMD	04/21/2015	2015-6/10
<u>Purchasing and General Services</u>					
R33-1-1	Definitions	38974	AMD	01/28/2015	2014-24/4
R33-6-101	Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction	38975	AMD	01/28/2015	2014-24/5
R33-7	Request for Proposals	38976	AMD	01/28/2015	2014-24/6
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	38977	AMD	01/28/2015	2014-24/9
R33-16-401	Protest Officer May Correct Noncompliance, Errors and Discrepancies	38978	AMD	01/28/2015	2014-24/12
R33-26	State Surplus Property	39084	NSC	01/28/2015	Not Printed
R33-26-202	Information Technology Equipment	39042	AMD	03/31/2015	2015-2/33
<b>AGRICULTURE AND FOOD</b>					
<u>Animal Industry</u>					
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons	39075	5YR	01/13/2015	2015-3/67
R58-11	Slaughter of Livestock and Poultry	39073	5YR	01/13/2015	2015-3/67
R58-17	Aquaculture and Aquatic Animal Health	39074	5YR	01/13/2015	2015-3/68
R58-21	Trichomoniasis	39086	5YR	01/21/2015	2015-4/37
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	39237	5YR	03/24/2015	2015-8/33
R68-22	Industrial Hemp Research	39148	NEW	04/22/2015	2015-6/14
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	39223	5YR	03/16/2015	2015-7/57
<b>ALCOHOLIC BEVERAGE CONTROL</b>					
<u>Administration</u>					
R81-1-3	General Policies	39156	AMD	04/28/2015	2015-6/16
R81-1-6	Violation Schedule	39158	AMD	04/28/2015	2015-6/18

R81-2-1	Special Orders of Liquor by Public	39154	AMD	04/28/2015	2015-6/22
R81-3-5	Special Orders of Liquor by Public	39155	AMD	04/28/2015	2015-6/23
R81-4E	Resort Licenses	39059	5YR	01/08/2015	2015-3/69
ATTORNEY GENERAL					
<u>Administration</u>					
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39032	AMD	03/26/2015	2015-2/34
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39099	AMD	03/26/2015	2015-4/4
AUDITOR					
<u>Administration</u>					
R123-6	Allocation of Money in the Property Tax Valuation Agency Fund	39136	AMD	04/08/2015	2015-5/8
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-2	Capitol Hill Complex Facility Use	39025	AMD	02/24/2015	2015-2/41
R131-9	Art and Exhibits	39266	EXD	04/08/2015	2015-9/87
COMMERCE					
<u>Administration</u>					
R151-4-109	Extension of Time and Continuance of Hearing	39144	AMD	04/10/2015	2015-5/9
R151-14-3	Adjudicative Proceedings	39034	AMD	02/24/2015	2015-2/49
<u>Consumer Protection</u>					
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	39281	5YR	04/15/2015	2015-9/83
R152-39	Child Protection Registry Rules	39282	5YR	04/15/2015	2015-9/83
<u>Occupational and Professional Licensing</u>					
R156-17b	Pharmacy Practice Act Rule	39056	5YR	01/05/2015	2015-3/69
R156-17b	Pharmacy Practice Act Rule	39018	AMD	02/24/2015	2015-2/51
R156-20a	Environmental Health Scientist Act Rule	39306	5YR	04/27/2015	Not Printed
R156-24b-302b	Qualifications for Licensure - Examination Requirements	39092	AMD	03/24/2015	2015-4/9
R156-26a-501	Unprofessional Conduct	39055	AMD	04/02/2015	2015-3/7
R156-31b	Nurse Practice Act Rule	39132	AMD	04/07/2015	2015-5/10
R156-31b-202	Advisory Peer Education Committee Created -- Membership - Duties	38981	AMD	01/22/2015	2014-24/13
R156-31b-609	Standards for Out-of-State Programs Providing Clinical Experiences in Utah	38980	AMD	01/22/2015	2014-24/14
R156-37	Utah Controlled Substances Act Rule	39015	AMD	02/24/2015	2015-2/80
R156-37f-102	Definitions	39020	AMD	02/24/2015	2015-2/84
R156-47b	Massage Therapy Practice Act Rule	38915	AMD	04/21/2015	2014-22/16
R156-47b	Massage Therapy Practice Act Rule	38915	CPR	04/21/2015	2015-6/42
R156-60a	Social Worker Licensing Act Rule	38979	AMD	01/22/2015	2014-24/15
R156-60d	Substance Use Disorder Counselor Act Rule	38964	AMD	01/22/2015	2014-24/17
R156-71-202	Naturopathic Physician Formulary	39151	AMD	04/21/2015	2015-6/25
R156-83	Online Prescribing, Dispensing, and Facilitation Licensing Act Rule	39298	5YR	04/23/2015	Not Printed
<u>Real Estate</u>					
R162-2c	Utah Residential Mortgage Practices and Licensing Rules	39249	5YR	03/31/2015	2015-8/33
R162-2c-201	Licensing and Registration Procedures	38999	AMD	02/10/2015	2015-1/8
R162-2e	Appraisal Management Company Administrative Rules	39291	5YR	04/17/2015	Not Printed
R162-2e-401	Unprofessional Conduct	38971	AMD	01/28/2015	2014-24/26
R162-2f-206	Certification of Continuing Education Course	38972	AMD	01/21/2015	2014-24/28

RULES INDEX

R162-57a	Timeshare and Camp Resort Rules	39292	5YR	04/21/2015	Not Printed
<u>Securities</u>					
R164-2	Investment Adviser - Unlawful Acts	39104	5YR	02/02/2015	2015-4/37
R164-15-2	Notice Filings for Rule 506 Offerings	38926	AMD	03/10/2015	2014-22/20
CORRECTIONS					
<u>Administration</u>					
R251-303	Offenders' Use of Telephones	39060	5YR	01/08/2015	2015-3/70
EDUCATION					
<u>Administration</u>					
R277-111	Sharing of Curriculum Materials by Public School Educators	39077	5YR	01/15/2015	2015-3/71
R277-111	Sharing of Curriculum Materials by Public School Educators	39078	AMD	03/10/2015	2015-3/13
R277-114	Corrective Action and Withdrawal or Reduction of Program Funds	39335	5YR	05/01/2015	Not Printed
R277-419-9	Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors	39080	EMR	01/15/2015	2015-3/63
R277-459	Classroom Supplies Appropriation	39336	5YR	05/01/2015	Not Printed
R277-468	Parent/Guardian Review of Public Education Curriculum and Review of Complaint Process	39079	NEW	03/10/2015	2015-3/14
R277-474	School Instruction and Human Sexuality	39337	5YR	05/01/2015	Not Printed
R277-475	Patriotic, Civic and Character Education	39338	5YR	05/01/2015	Not Printed
R277-487	Public School Data Confidentiality and Disclosure	38956	AMD	01/07/2015	2014-23/6
R277-497	School Grading System	39007	AMD	02/09/2015	2015-1/11
R277-504	Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure	39008	AMD	02/09/2015	2015-1/13
<u>Rehabilitation</u>					
R280-203	Certification Requirements for Interpreters for the Hearing Impaired	38930	AMD	01/02/2015	2014-22/22
ENVIRONMENTAL QUALITY					
<u>Administration</u>					
R305-5	Health Reform - Health Insurance Coverage in DEQ State Contracts - Implementation	39135	5YR	02/09/2015	2015-5/101
<u>Air Quality</u>					
R307-103	Administrative Procedures	39109	5YR	02/05/2015	2015-5/101
R307-120	General Requirements: Tax Exemption for Air Pollution Control Equipment	38998	AMD	03/05/2015	2015-1/17
R307-165	Emission Testing	39110	5YR	02/05/2015	2015-5/102
R307-201	Emission Standards: General Emission Standards	39111	5YR	02/05/2015	2015-5/103
R307-202	Emission Standards: General Burning	39113	5YR	02/05/2015	2015-5/103
R307-203	Emission Standards: Sulfur Content of Fuels	39112	5YR	02/05/2015	2015-5/104
R307-204	Emission Standards: Smoke Management	39114	5YR	02/05/2015	2015-5/104
R307-205	Emission Standards: Fugitive Emissions and Fugitive Dust	39115	5YR	02/05/2015	2015-5/105
R307-206	Emission Standards: Abrasive Blasting	39116	5YR	02/05/2015	2015-5/105
R307-207	Residential Fireplaces and Solid Fuel Burning Devices	39117	5YR	02/05/2015	2015-5/106
R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties	38842	AMD	02/04/2015	2014-19/44
R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties	38842	CPR	02/04/2015	2015-1/48

R307-305	Nonattainment and Maintenance areas for PM10: Emission Standards	39118	5YR	02/05/2015	2015-5/107
R307-306	PM10 Nonattainment and Maintenance Areas: Abrasive Blasting	39119	5YR	02/05/2015	2015-5/107
R307-307	Road Salting and Sanding	39120	5YR	02/05/2015	2015-5/108
R307-309	Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust	39121	5YR	02/05/2015	2015-5/108
R307-310	Salt Lake County: Trading of Emission Budgets for Transportation Conformity	39122	5YR	02/05/2015	2015-5/109
R307-311	Utah County: Trading of Emission Budgets for Transportation Conformity	38997	NEW	03/05/2015	2015-1/22
R307-401-19	General Approval Order	38901	AMD	02/05/2015	2014-21/16
R307-841	Residential Property and Child Occupied Facility Renovation	39123	5YR	02/05/2015	2015-5/109
R307-842	Lead-Based Paint Activities	39124	5YR	02/05/2015	2015-5/110
<u>Drinking Water</u>					
R309-100	Administration: Drinking Water Program	39196	5YR	03/13/2015	2015-7/57
R309-105	Administration: General Responsibilities of Public Water Systems	39197	5YR	03/13/2015	2015-7/58
R309-110	Administration: Definitions	39198	5YR	03/13/2015	2015-7/59
R309-115	Administrative Procedures	39199	5YR	03/13/2015	2015-7/59
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R313-17-4	Special Procedures for Decisions Associated with Licenses for Uranium Mills and Disposal of Byproduct Material	38770	CPR	02/17/2015	2014-24/40
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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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Environmental Quality, Air Quality	39116	R307-206	5YR	02/05/2015	2015-5/105
	39119	R307-306	5YR	02/05/2015	2015-5/107
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Public Safety, Driver License	39182	R708-41	5YR	03/10/2015	2015-7/79
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	39034	R151-14-3	AMD	02/24/2015	2015-2/49
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	38770	R313-17-4	CPR	02/17/2015	2014-24/40
School and Institutional Trust Fund Board of Trustees, Administration	39143	R849-1	NEW	04/15/2015	2015-5/92
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	39206	R309-300	5YR	03/13/2015	2015-7/63
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	38770	R313-17-4	CPR	02/17/2015	2014-24/40
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	39256	R850-27	5YR	04/01/2015	2015-8/40
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	38842	R307-302	CPR	02/04/2015	2015-1/48
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